

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA



MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CR 46/2013

In the matter between:

THE STATE

and

SHAUN LEROY GAWANAB

ACCUSED

(HIGH COURT MAIN DIVISION REVIEW REF NO.: 81/2013)

Neutral citation: *The State v Gawanab* (CR 46/2013) [2013] NAHCMD 219 (29 July 2013)

Coram: MILLER AJ et DAMASEB JUDGE-PRESIDENT

Delivered on: 29 July 2013

ORDER

The order made by the magistrate is set aside and the matter is returned to the magistrate to deal therewith in accordance with this judgment.

JUDGMENT

MILLER AJ :[1] The accused was arraigned before the magistrate at Omaruru on a charge of attempted murder.

[2] The learned Magistrate ordered that the accused be referred to a mental institution for observation in terms of Section 77 of the Criminal Procedure Act, Act 51 of 1977.

[3] In due course, a physchiatrist, Dr. Alibusa Seddie Wilfred, after observing the accused for a period of a month, filed a report which was placed before the magistrate.

[4] It is apparent from the report that in the opinion of Dr. Wilfred the accused was mentally ill to the extent that he was unable to appreciate the wrongfulness of his actions.

[5] The learned Magistrate thereupon ordered that the accused be detained in terms of Section 9(6) of the Mental Health Act of 1973.

[6] The learned Magistrate correctly conceded that the order was not competent.

[7] Bearing in mind the finding that the accused was unable to appreciate the wrongfulness of his act, the Magistrate should have proceeded, instead in accordance with the provisions of Section 78 of Act 51 of 1977.

[8] The order made by the Magistrate is set aside and the matter is returned to the Magistrate to deal therewith in accordance with this judgment.

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P J MILLER

Judge

I agree

P J DAMASEB

Judge-President

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