

REPUBLIC OF NAMIBIA



NAMIBIA

IN THE HIGH COURT OF

JUDGMENT

Case no: CR 5/2013

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

and

HAROLD AMKHEIBEB

ACCUSED

(HIGH COURT MAIN DIVISION REVIEW REF NO.: 1/2013)

Neutral citation: The State v Amkheibeb (CR 5/2013) [2013] *NAHCMD* 23
(30 January 2013)

CORAM: **HOFF, J et SMUTS, J**

Delivered on: 30 January 2013

Flynote: An accused should be warned that conduct is to be regarded as contempt in facie curiae – and that he may be convicted to contempt and be afforded an opportunity to address the court in that regard before convicting an accused for such an offence.

ORDER

The conviction of contempt of court and the sentence of a fine of N\$300.00 or 3 months imprisonment are set aside.

JUDGMENT

SMUTS, J.: [1] The Magistrate for the district of Grootfontein has submitted this matter for special review because the accused was convicted of contempt of court in *facie curiae* on 9 January 2013. The accused was sentenced to a fine of N\$300.00 or 3 months imprisonment.

[2] When the accused was arraigned on 11 December 2012, he was charged with two counts, namely housebreaking and attempted housebreaking. He was then asked to enter his pleas on these charges. He pleaded guilty on both counts but as a result of his explanations, the presiding Magistrate correctly entered pleas of not guilty on both counts. The matter was then postponed.

[3] On its resumption on 9 January 2013, the following occurred at the outset:

“Accused: Your penis your worship, I do not want to be here.

Court: why are you saying or making those remarks?

Accused: I don’t know why but I repeat your penis.

Court: I still caution you please if you are aggrieved on anything. Please you may address on as different platform. Do you understand?

Accused: I understand and I repeat that your penis

Court: Under the present circumstances, the court has no option but for find the accused guilty of contempt of courts in *facie curiae*.

PP: No previous conviction the matter may be finalised.”

[4] After the accused’s rights concerning mitigation were explained, the accused merely stated:

“I’m 40 years old, I’m single, I can’t pay a fine...”

He was then sentenced to a fine of N\$300.00 or 3 months imprisonment for contempt in *facie curiae*.

[5] This court ¹has in detail explained the nature and elements of the offence of contempt of court in *facie curiae* and set out the procedure to be followed by

¹S v Paaie 2006(1) NR 250 (HC)

courts when encountering the offence. Relevant for present purposes is the application of the fundamental principle of *audi alteram partem*. A presiding officer should plainly warn the accused that his conduct may be regarded as contempt and that he may be convicted of the offence of contempt of court and then afford the accused the opportunity to address the court in that regard². In this instance the accused was not represented. The need for a full warning in these terms was all the more required. It would also appear from the record that the accused made his remarks through an interpreter. A detailed warning of this kind is also required to ensure that the presiding officer can be satisfied that the particular words are those of the accused and afford an opportunity for an accused to address that aspect³.

[6] The Magistrate, after establishing what was said, merely stated:

“I still caution you please if you are aggrieved on anything. Please you may address on as different platform. Do you understand?”

But the Magistrate did not expressly warn the accused that he ran the risk of being convicted for contempt of court, as he should have. That was procedurally required of the Magistrate. The failure to do so results in the conviction and sentence being set aside.

[7] The following order is made:

The conviction of contempt of court and the sentence of a fine of N\$300.00 or 3 months imprisonment are set aside.

DF Smuts
Judge

²S v Paaie supra at 255 B-C; S v Cloete 2006(2) 430 (HC) at 431

³S v Paaie supra at p 257

I agree

E Hoff
Judge