



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CR: 07/2014

In the matter between:

THE STATE

and

MOMO TIMAT

ACCUSED

(HIGH COURT MAIN DIVISION REVIEW REF NO. 19/2014)

Neutral citation: *S v Timat* (CR 07/2014) [2014] NAHCMD 65 (24 February 2014)

Coram: HOFF J and SHIVUTE J

Delivered: 24 February 2014

ORDER

The conviction for contempt of court as well as the sentence imposed is set aside.

JUDGMENT

HOFF J (SHIVUTE J concurring):

[1] The accused was arraigned in the magistrate's court on a charge of assault with intent to do grievous bodily harm.

[2] It appears that the case had been postponed on two previous occasions in order to make the necessary arrangements to have the accused admitted to the psychiatric ward of Windhoek State Hospital for observation. The accused remained in custody.

[3] When the matter was called on 7 October 2013 the public prosecutor stated that the accused has been 'booked for mental observation' to which the accused responded to as follows:

'You are fucking the small children and your brother is in custody.'

[4] The magistrate informed the accused that should he continue with such behaviour he would be convicted of contempt of court, to which the accused replied as follows:

'You want me to walk here with thick lips, can send me to prison, because here you are bullying people.'

[5] The magistrate thereupon informed the accused that he had been convicted of contempt of court. The rights of the accused in mitigation of sentence were explained.

[6] It appears from the record that the accused continue with his 'unruly behaviour' and he was then ordered to be taken back 'into custody'. It may be inferred that he was taken back to the cells.

[7] The magistrate thereafter imposed a sentence of three months imprisonment.

[8] I directed the following query to the magistrate:

'It appears from the record that the accused was not given the opportunity to address the court on the issue why he should not be convicted of contempt of court prior to his conviction thereof. Is there a reason why the accused was not afforded this opportunity?'

[9] The magistrate in his reply mentioned that it was impossible to address the accused person because he continued to interrupt the proceedings, but conceded that he was under an obligation to ensure that accused was informed of his right to address the court prior to convicting him and that this should have been reflected on the record of the proceedings. The magistrate further suggested that the conviction for contempt of court be set aside. I agree.

[10] By failing to provide the appellant an opportunity to address the court before convicting the accused, the accused was in essence denied his right to a fair trial.

[11] In the result the following orders are made:

The conviction for contempt of court as well as the sentence imposed is set aside.

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E P B HOFF
Judge

N N SHIVUTE
Judge