

REPUBLIC OF NAMIBIA

NOT REPORTABLE



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK
JUDGMENT

Case no: CR 17/2016

In the matter between:

THE STATE

and

JONAS KAREL

ACCUSED

(HIGH COURT MAIN DIVISION REF. NO. 336/2016)
(MAGISTRATE SERIAL NO. 9/2016)

Neutral citation: *State v Karel* (CR 17/2016) [2016] NAHCMD 68 (11 March 2016)

Coram: SIBOLEKA J AND USIKU J

Delivered: 11 March 2016

Flynote: Criminal law: In a criminal trial where witnesses have already testified, evidence has been recorded and the trial Magistrate leave his employment to elsewhere the matter should start afresh before another Magistrate.

Summary: The accused appeared before the Magistrate at Katutura. He pleaded not guilty and evidence was recorded. Another Magistrate withdrew the matter because the trial Magistrate was not there and the complainant had in the meantime passed away.

Held: This is a partly heard matter if the trial Magistrate is no longer available, another Magistrate at the same station must start the trial afresh.

ORDER

If the trial Magistrate Mayumbelo is still an employee of the Magistracy:

The withdrawal of the matter is set aside. The Magistrate must continue with the trial until finality.

If the trial Magistrate Mayumbelo has in the meantime left the Magistracy and is no longer available:

The proceedings are set aside and another Magistrate at the same station must start the matter afresh.

REVIEW JUDGMENT

SIBOLEKA J (USIKU J concurring):

[1] This is a review matter.

[2] The accused appeared before the Magistrate's Court, Katutura, Windhoek on a charge of Housebreaking with intent to steal and theft. He pleaded not guilty and the trial started, the evidence of two witnesses was heard. From here numerous postponements followed till another Magistrate withdraw the matter.

[3] In the light of the above I make the following order:

If the trial Magistrate Mayumbelo is still in The Magistracy the withdrawal of the matter is set aside. He must avail the prosecution an opportunity to call further witnesses if any and continue the hearing to finalize the matter without any delay.

If the trial Magistrate Mayumbelo had in the meantime left the Magistracy:

The proceedings are set aside. Another Magistrate at Katutura Magistrate's Court should be assigned to start the trial *de novo* seeing that evidence had already been recorded.

A M SIBOLEKA
Judge

D N USIKU
Judge