



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CR 32/2017

THE STATE

versus

VERONGUA MURENGA
JOSEPH SHADUKA

FIRST ACCUSED
SECOND ACCUSED

(HIGH COURT MAIN DIVISION REVIEW REF NO 1533/2016)
(MAGISTRATE'S SERIAL NO. 73/2016)

Neutral citation: *S v Murenga* (CR 32/2017) [2017] NAHCMD 136 (12 May 2017)

Coram: LIEBENBERG J et SHIVUTE J

Delivered: 12 May 2017

ORDER

The conviction and sentence are set aside.

REVIEW JUDGMENT

SHIVUTE J (LIEBENBERG J CONCURRING)

[1] The accused persons were convicted of housebreaking with intent to steal and theft after the court invoked the provisions of s 112 (1) (b) of the Criminal Procedure Act 51 of 1977.

[2] I queried the learned magistrate how she satisfied herself that the accused persons had admitted all the elements of the offence as there were no questions asked pertaining to their intentions at the time they broke and entered the house.

[3] The learned magistrate replied to the query that she was satisfied that the accused persons committed the offence because she asked the accused persons the following questions:

‘Q. Did the owner give you permission to break the window and remove the items?’

A. No.

Q. Was it your intention to permanently deprive the complainant of his items?’

A. Yes.’

[4] The questions referred to above do not establish the accused persons’ intention at the time they were breaking and entering the premises. Therefore the magistrate could not have satisfied herself that the accused persons had the intention to steal at the time they broke into the premises.

[5] Section 112 (1) (b) of Act 51 of 1977 questioning has a twofold purpose namely: to establish the factual basis of the plea of guilty and to establish the legal basis for such plea. The legal requirements of the commission of the offence include questions of unlawfulness, *actus reus and mens rea*. The court can only satisfy itself if all the elements of the offence are adequately covered through the admissions.

[6] In the present matter the court never asked the two accused persons pertaining to their intentions at the time they entered the premises. The State has

alleged that the accused persons' intention to enter the premises was to steal, this is an essential element therefore it should be established by the learned magistrate through questioning.

[7] I am therefore not satisfied that the accused persons have admitted all the elements of the offence because the learned magistrate has failed to cover the accused persons' intentions at the time of breaking and entering of the premises. The accused persons were sentenced to six months imprisonment and they had already served their sentences. The magistrate explained that she could not reply to the query on time because she was taken ill.

[8] In view thereof, I do not find it necessary to remit the matter to the magistrate in terms of s 312 (1) of the Criminal Procedure Act to question the accused persons afresh.

[9] In the result the following order is made:

The conviction and sentence are set aside.

NN SHIVUTE

Judge

JC LIEBENBERG

Judge