

**REPUBLIC OF NAMIBIA**



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK  
REVIEW JUDGMENT**

**Case no: CR 3/2018**

In the matter between:

**THE STATE**

**v**

**JOHANNES ROOI**

**ACCUSED**

**(HIGH COURT MAIN DIVISION REF. NO. 91/2018)  
(MAGISTRATE SERIAL NO. 140/2017)**

**Neutral citation:** *S v Rooi* (CR 3/2018) [2018] NAHCMD 12 (01 February 2018)

**Coram:** SIBOLEKA J and SALIONGA AJ

**Delivered:** 01 February 2018

**Flynote:** Criminal law: Review matter – evidence during trial proved fraud instead of the preferred charge of theft on the second count. Conviction altered accordingly.

**Summary:** The accused, a garage employee loaded drums sometimes containers on the GRN vehicle and filled them with diesel/petrol under the impression that the fuel was required in line with his official duties while that was not the case.

Held that the charges of theft is altered to fraud.

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### ORDER

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1. The conviction on theft on the first count is confirmed.
  2. The conviction on theft on the second count is substituted with that of fraud.
  3. The sentence of N\$ 4 000 or eight months imprisonment is confirmed.
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### REVIEW JUDGMENT

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SIBOLEKA J (SALIONGA AJ concurring):

[1] The accused appeared in the Magistrate's Court, Keetmanshoop on the following charges:

Count 1: Theft

That the accused is guilty of the crime of Theft.

In that upon or between February and March 2016 and at or near Keetmanshoop in the district of Keetmanshoop the said accused did wrongfully, unlawfully and intentionally steal 1 x GRN Fuel Card the property or in the lawful possession of Daniel Timotheus Frederick.

List property	Value
_____	_____
_____	_____
_____	_____
_____	_____

Count 2: Theft

That the accused is guilty of the crime of Theft.

In that upon or between February and March 2016 and at or near Deo-Geo

Investment Puma Service Station, Keetmanshoop in the district of Keetmanshoop the said accused did wrongfully, unlawfully and intentionally steal fuel the property or in the lawful possession of Deodat David Dirkse.

List of property stolen	Value
Diesel	N\$ 4 108,30
Petrol	N\$ 241,44

[2] The accused pleaded not guilty on all counts and after trial he was convicted as charged. All counts were taken together for purposes of sentencing him to: N\$ 4 000 or eight months imprisonment. However, the evidence of the prosecution on the matter credibly brought the following undisplaced facts to surface: That during the alleged period the accused, an employee of the Government Garage at Keetmanshoop took and used a fuel/petrol card of a government vehicle with the registration no. GRN 4714. He loaded drums/containers on the said vehicle, drove to the Deo-Geo Investment Puma Service Station in Keetmanshoop and filled petrol in the amount of N\$ 241.44 and diesel in the amount of N\$ 4,108.30 giving the impression that the said fuel would be used in pursued and or in line with his duties as a government employee while that was not the case. It is my considered view that the accused should have been convicted of fraud and not theft on the second count.

[3] In light of the above the conviction of theft on the second count cannot be allowed to stand, while the sentence will not be tempered with.

[4] In the result I make the following order:

1. The conviction of theft on the first count is confirmed.
2. The conviction of theft on the second count is substituted with that of fraud.
3. The sentence of N\$ 4,000 or eight (8) months imprisonment for both counts is confirmed.

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A M SIBOLEKA  
Judge

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J T SALIONGA  
Acting Judge