

Case Title: <i>The State v Rudolf Ngava</i>	Case No: CR 73/2018 Division of Court: Main Division
Heard before: Honourable Mr Justice Liebenberg <i>et</i> Honourable Mr Justice Ndauendapo	Delivered on: 26 September 2018
Neutral citation: <i>S v Ngava</i> (CR 73/2018) [2018] NAHCMD 302 (26 September 2018)	
The order: In the result the following order is made: a) The conviction and sentence are set aside. b) The matter is remitted to the trial court in terms of s 312(1) of Act 51 of 1977 with the direction to continue questioning the accused in terms of s112(1)(b) along the lines set out in this judgment and to bring proceedings to its natural conclusion.	
Reasons for order:	
LIEBENBERG J (concurring NDAUENDAPO J) 1. This is the second case emanating from the same court where matters are sent on review where the magistrate failed to proofread the record of the proceedings prior to dispatching same for review. The remarks made by this court in the other matter finds equal application in the present case (See <i>S v Henonga</i> (CR 00/2018) [2018] NAHCMD 00 (September 2018)). Suffice it to say that magistrates are under a duty to ensure that the records of proceedings sent on review must be read and checked to ensure that it is in order and satisfies the requirements set out in the Magistrate's Codified Instructions.	

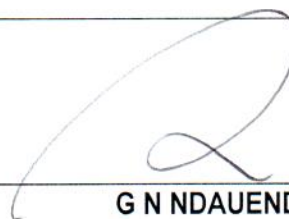
2. With that said, the record of proceedings of 02 March 2018 reflects that the accused appeared on a charge of possession of game meat to wit, that of an oryx, and secondly, it reflected that he appeared with three other accused persons before court. Which clearly wasn't the case. The review court dispatched a query to the magistrate enquiring that in view of the accused having been charged with housebreaking with intent to steal and theft, and there only being one accused, could the magistrate explain the inconsistencies in the record. The magistrate's respond was that it was a human error. This error would have not occurred if the magistrate was more diligent in the exercise of his duties.
3. The accused was charged for housebreaking with intent to steal and theft. He pleaded guilty and he thereafter was sentenced to 5 (five) years' imprisonment.
4. When the matter came on review a query was sent to the magistrate to explain why the court failed to enquire the intent of the accused upon breaking and entering the house. The magistrate responded that he laboured under the impression that the intent requirement was satisfied when the accused pleaded guilty.
5. From the record it shows that the court during the s 112(1)(b) Act 51 of 1977 questioning did not enquire as to the intent of the accused when breaking and entering the house.
6. Section 112 (1)(b) questioning has a twofold purpose namely, to establish the factual basis for the plea of guilty, and to establish the legal basis for such plea. From the admissions the court must conclude whether the legal requirements for the commission of the offence have been met. These include questions of unlawfulness, *actus reus* and *mens rea*. The court can only satisfy itself if all the admissions adequately cover all the elements of the offence. (See *The State v Festus Sakaria* (CR 79/2011) [2011] NAHCMD 386 (24 August 2011) (unreported)
7. In the present matter, the accused did admit taking items belonging to the complainant, however, the magistrate never asked the accused what his intentions were upon entering the house. As a result thereof the accused did not admit to all the elements of the offence, more particularly his intention at the time of the breaking, and the conviction cannot be allowed to stand.

8. In the result the following order is made:

- a) The conviction and sentence are set aside.
- b) The matter is remitted to the trial court in terms of s 312(1) of Act 51 of 1977 with the direction to continue questioning the accused in terms of s112(1)(b) along the lines set out in this judgment and to bring proceedings to its natural conclusion.



J C LIEBENBERG
JUDGE



G N NDAUENDAPO
JUDGE