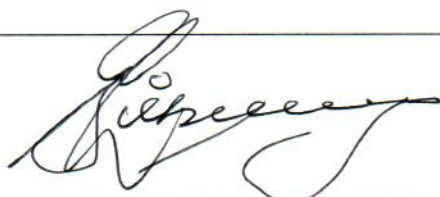


Case Title: <i>The State v Kandunda Kathiku</i>	Case No: CR 91/2018 Division of Court: Main Division
Heard before: Honourable Mr Justice Liebenberg <i>et</i> Honourable Mr Justice Velikoshi (Acting)	Delivered on: 28 November 2018
Neutral citation: <i>S v Kathiku</i> (CR 91 /2018) [2018] NAHCMD 379 (28 November 2018)	
The order: <p style="text-align: center;">The conviction and sentence are set aside.</p>	
Reasons for order:	
<p>LIEBENBERG J (concurring VELIKOSHI AJ)</p> <ol style="list-style-type: none"> 1. This is a review brought in terms of s 304 of the Criminal Procedure Act 51 of 1977(the Act), as amended. 2. The accused was charged in the Magistrate Court for the district of Rehoboth for forging or altering bank notes in contravention of s 2(b) of the Prevention of Counterfeiting of Currency Act 16 of 1965, as amended (Act 16 of 1965). 3. The accused pleaded guilty to the offence and the magistrate invoked the provisions of s 112(1)(b) of the Act so as to determine whether she admitted to all the elements of the offence. 4. During the s 112(1)(b) questioning the accused stated that he wasn't aware that the N\$ 200.00 note was fake. The reason being that a customer bought vegetables from the accused with the said note and when he went to go and ask for change at Woermann Brock, it was from there that he came to learn from the cashier that the said note was fake. 	

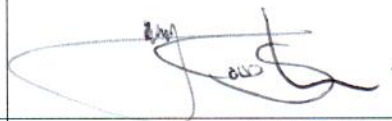
5. Nonetheless, the State accepted the plea of guilty on the bases that the said offence does not require intent or knowledge.
6. The court *a quo* was satisfied that the accused admitted to all the elements of the offence, which resulted in the accused being convicted and sentenced to 12 months' imprisonment wholly suspended for three years on condition that the accused is not convicted of tendering forged or altered bank notes.
7. In view of the conclusion reached herein, this court declines to first obtain a statement from the presiding magistrate as provided for in s 302(2)(a) of the Act as, in my opinion, the accused would be prejudiced if the record of the proceedings are not laid before the review court instantly.
8. Section 2 of Act 16 of 1965 reads as follows:
 'Any person who-
 (a) counterfeits or performs any part of the process of counterfeiting any current coin;
 (b) forges or alters a bank note;
 (c) utters, tenders or accepts any counterfeit coin, knowing it to be counterfeit, or a forged or altered bank note, knowing it to be forged or altered;. . .
 shall be guilty of an offence and liable on conviction. . .'
9. From a reading of the charge sheet, it states that the "accused did wrongfully and unlawfully alter bank notes . . . by presenting the forged note to a teller in Woermann Brock" which is an offence under sub section 2(c) of the Act.
10. The sub-section requires that intent and knowledge of the unlawfulness of the act by the accused should be present. Furthermore, the general principles of criminal law require a person to have the required intention and knowledge in order to be liable. The accused in the present instances never admitted to having knowledge of the fact that the N\$ 200.00 note was fake, or that he intended tendering a false note to the cashier.
11. The magistrate could therefore not have been satisfied that the accused admitted to all the elements of the offence. In the premises, the conviction and sentence cannot be permitted to stand.

12. In the result, it is ordered that the conviction and sentence are set aside.



J C LIEBENBERG

JUDGE



I T VELIKOSHI

ACTING JUDGE