



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case no: CR 08/2019

In the matter between:

**THE STATE**

v

**PIET BLEES**

**ACCUSED**

(HIGH COURT MAIN DIVISION REVIEW REF NO. 1790/2018)

**Neutral citation:** *S v Blee*s (CR 08/2019) [2019] NAHCMD 10 (24 January 2019)

**Coram:** USIKU, J and UNENGU, AJ

**Delivered:** 24 January 2019

**Flynote:** Criminal Procedure Act – Automatic Review – Questioning in terms of s 112(1)(b) of the CPA – Questions put to the accused do not establish the offence of house breaking with intent to steal and theft but theft – Verdict of guilty housebreaking with intent to steal and theft substituted with a verdict of guilty of theft – Sentence imposed appropriate and confirmed.

**Summary:** Criminal Procedure Act – Plea of guilty – Questioning in terms of s 112(1)(b) of the CPA. The unrepresented accused was charged with, convicted of and sentenced for housebreaking with intent to steal and theft. However, no question to establish the elements of the offence was posed to the accused. On review, the verdict of guilty housebreaking with intent to steal and theft is substituted with a verdict of guilty of theft being a competent verdict of housebreaking with intent to steal and theft. The sentence is confirmed.

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### **ORDER**

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- (i) The verdict of guilty of housebreaking with intent to steal and theft is hereby set aside and substituted with a verdict of guilty of theft.
  - (ii) The sentence imposed by the magistrate is confirmed.
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### **REVIEW JUDGMENT**

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**UNENGU, AJ (USIKU, J concurring):**

[1] This is a review matter in terms of s 302 of the Criminal Procedure Act<sup>1</sup> (the CPA).

[2] The accused who was not represented was charged with, convicted of and sentenced for housebreaking with intent to steal and theft.

[3] The annexure attached to the charge sheet reads:

‘In that upon or about the 29 day of September 2018 and at or near Farm Namtsis in the District of Mariental the said accused did wrongfully and unlawfully break and enter the store room of Dwayne Esterhuizen with intent to steal and did unlawfully steal one water pump valued N\$8000.00 the property or in the lawful possession of Dwayne Esterhuizen.’

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<sup>1</sup> Act 51 of 1977 as amended.

[4] When asked to plead to the charge against him, the accused pleaded guilty and was questioned in terms of s 112(1)(b) of the CPA. Hereunder are the full proceedings conducted by the magistrate in terms of s 112(1)(b), *verbatim*.

'Crt: accused did you understand the charge?

Acc: Yes.

Crt: Accused how do you plea?

Acc: Guilty.

SP: Section 112(1)(b) CPA.

Crt: Section 112(1)(b) CPA 51/77 as amended.

Crt: Questioning accused.

Q: Accused were you forced to plead guilty?

A: No.

Q: Why do you admit guilt.

A: I stole one water pump valued at N\$8000.00.

Q: What did you intend to do with this pump?

A: I wanted to sell it to buy food.

Q: Does your state of wanting to sell the pump to buy food, justify your conduct?

A: No.

Q: Did this incident occur on about the 29 September 2018?

A: Yes.

Q: Near farm Namtsis?

A: Yes.

Q: Within the district of Mariental?

A: Yes.

Q: How did you gain entrance to the farm?

A: I was working there.

Q: When you were on the farm what did you intent doing?

A: I worked with horses and cattle on the farm.

Q: Did you have any right to commit the offence of housebreaking with intent to steal and theft on the farm?

A: No.

Q: Did any person gave you any right to break and enter the store room of Dwayne Esterhuizen with the intent to steal the one water pump?

A: No.

Q: Were you aware that your conduct was wrong and unlawful?

A: Yes.

Q: If caught punishable by law?

A: I gave it back to the owner, Dwayne Esterhuizen.

Crt: Satisfied accused had admitted to all the elements of the allegations in the charge, accused is convicted.'

[5] It is apparent from the questioning by the learned magistrate above that not a single question to establish the crime of housebreaking with intent to steal and theft was asked. The only question she asked about gaining entrance – is the question how did the accused gain entrance to the farm, to which he answered that he worked on the farm. Further, no question in the direction of breaking into the store room.

[6] When queried to indicate which elements of housebreaking with intent to steal did the accused admit for her to be satisfied and to convict the accused of housebreaking with intent to steal and theft? The learned magistrate in her reply conceded that no element was admitted by the accused to convict him as charged.

[7] The magistrate is correct in making such a concession. The accused, however, admitted stealing one water pump valued at N\$8000.00 the property of the complainant which he recovered.

[8] Therefore, and in view of theft being a competent verdict of housebreaking with intent to steal and theft, it is not necessary to send the matter back for proper questioning. The conviction on housebreaking with intent to steal and theft will be substituted for a verdict of guilty of theft.

[9] The sentence imposed is appropriate in the circumstances of the matter, thus it will not be interfered with.

[10] In the result, the following order is made:

- (i) The verdict of guilty housebreaking with intent to steal and theft is hereby set aside and substituted with a verdict of guilty of theft.
- (ii) The sentence imposed by the magistrate is confirmed

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E P UNENGU

Acting Judge

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D N USIKU

Judge