

Case Title: <i>The State v Given Araeb</i>	Case No: CR 101/2019
High Court MD Review No: 2285/2019	Division of Court: Main Division
Heard before: Mr Justice Liebenberg <i>et</i> Mr Justice Sibeya (<i>Acting</i>)	Delivered on: 12 December 2019
Neutral citation: <i>S v Araebt</i> (CR 101/2019) [2019] NAHCMD 553 (12 December 2019)	
The order: <ol style="list-style-type: none"> a) The conviction is set aside and substituted with a conviction of housebreaking with intent to steal. b) The sentence is confirmed. 	
Reasons for order:	
<p>LIEBENBERG J (concurring SIBEYA, AJ)</p> <ol style="list-style-type: none"> 1. This is a review in terms of s 302 (1) of the Criminal Procedure Act (the CPA) as amended. 2. The accused in this matter was charged with the offence of housebreaking with intent to commit a crime unknown to the State. He pleaded guilty and the court proceeded to question him in terms of section 112(1)(b) of the CPA. 3. During the court's questioning, the accused admitted that his intention for breaking into the complainant's house was to steal. The court was satisfied that the accused admitted to the offence charged and convicted accordingly. 4. When the matter came on review a query was directed enquiring as to whether, in light of the accused's admission that he entered the complainant's home with the intent to steal, the provisions of section 262(2) of the CPA did not find application. 	

5. The magistrate replied and stated that he was not sure if section 262(2) of the CPA applied because according to the authorities he consulted, namely *S v Mjoli*¹ and *S v Mokgeledi*², admissions did not constitute evidence. However, he invited the court to determine whether admissions made during the court's questioning in terms of section 112(1)(b) amount to evidence for purposes of section 262(2) of the CPA.
6. Section 262(2) of the Act reads:

'If the evidence on a charge of housebreaking with intent to commit an offence to the prosecutor unknown, whether the charge is brought under a statute or the common-law, does not prove the offence of housebreaking with intent to commit an offence to the prosecutor unknown but the offence of housebreaking with intent to commit a specific offence, the accused may be found guilty of the offence so proved.'

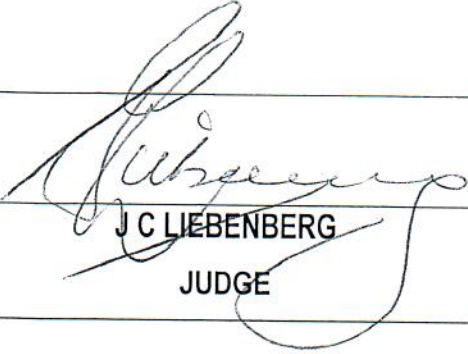
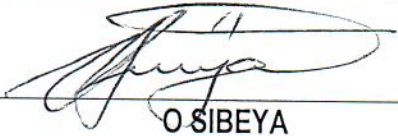
(Emphasis provided)
7. A case in point is *S v Kharuxab*.³ The facts of *Kharuxab* are similar to the present facts. That court relied on the South African case of *S v Andrews*⁴, where it was held that 'admissions made by the accused during the questioning in terms of s 112(1)(b). . . is part of the evidential material upon which a court could rely when applying s 262(2).' The resultant effect was that the conviction was set aside and substituted with one of housebreaking with intent to steal.
8. This court respectfully agrees with the approach taken in *S v Kharuxab*. Furthermore, there is no prejudice suffered to the accused if the conviction is altered to one of housebreaking with intent to steal because the accused admitted to the offence during the questioning process.
9. Despite substituting the conviction there is no need for the court to interfere with the sentence imposed.
10. In the result the following order is made:
 - a) The conviction is set aside and substituted with a conviction of housebreaking with intent to steal.
 - b) The sentence is confirmed.

¹ 1981 (3) SA 1233 (A) 1247-8.

² 1968 (4) SA 355 (A) 337.

³ 2008 (1) NR 345 (HC) at 546I-J.

⁴ 1984 (3) SA 306 (E).

	
J C LIEBENBERG JUDGE	O SIBEYA ACTING JUDGE