

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case Title: <i>The State v Ambrosius Van Der Westhuizen</i>	Case No: CR 5/2020
	Division of Court: Main Division
Heard before: Honourable Mr. Justice Unengu AJ et Honourable Ms. Justice Usiku J	Delivered on: 24 January 2020
(HIGH COURT MAIN DIVISION REVIEW REF NO. 1004/2019)	
Neutral citation: <i>S v van der Westhuizen</i> (CR 5/2020) [2020] NAHCMD 20 (24 January 2020)	
The order: <ol style="list-style-type: none">1. The conviction and sentence on count 1 are confirmed.2. The conviction and sentence on count 2 are set aside.	
Reasons for order: UNENGU, AJ (USIKU, J concurring): [1] The accused in the matter was charged with theft of stock of one goat valued at N\$ 650 as count 1 and contravening s 6 of the Prevention of Organized Crimes Act ¹ an offence of acquisition, possession or use of proceeds of unlawful activities as count 2. He pleaded guilty to both counts questioned in terms of s 112(1)(b) of the Criminal Procedure Act ² , (the CPA), was convicted and sentenced on count 1 with a sentence of twenty four months imprisonment of which half thereof suspended for five years on condition accused is not found guilty of theft of stock committed during the period of suspension. On count 2, a fine	

¹ 29 of 2004.

² 51 of 1977.

of two thousand Namibia dollars (N\$ 2000) in default of payment three (3) months imprisonment.

[2] The magistrate sent the matter on automatic review in terms of s 302 of the CPA. I am satisfied that the proceedings in respect of count 1 appear to be in accordance with justice therefore will be confirmed. However, the same cannot be said about the proceedings in respect of count 2. Count 2 is a duplication of count 1 because the acts of the accused both in count 1 and count 2 were perpetrated with a single intent and each of these acts if standing alone would be criminal. The single intent test. There is also the evidence test stating that if the evidence required to prove one criminal act necessarily involves proof of the other criminal act, then the two acts are considered as one transaction for the purpose of a criminal transaction. Which is the position in this matter. (See *S v Seibeb and Another*; *S v Eixab* 1997 NR 254 (HC)).

[3] Taking into account the principle applied in the *Seibeb and Another* matter, which I am also going to apply in this matter, it is my view that count 2 is an impermissible duplication of conviction of count 1 and as such will be set aside. In a recent judgment a Full Bench of this court, in the matter of *State v Henock and 8 Other cases*³, held that section 6 of the Prevention of Organized Crimes (POCA) only applies to a person other than the one who committed the predicate offence, in this matter, the accused. That being the case, an accused charged with theft cannot be charged again under s 6 of POCA for goods he had stolen in the charge of theft.

E P UNENGU ACTING JUDGE	D N USIKU JUDGE

³ Cases (CR 86/2019 [2019] NAHCMD 466 (11 November 2019)).

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