

REPUBLIC OF NAMIBIA

HIGH COURT OF
WINDHOEK
REVIEW JUDGMENT



NAMIBIA MAIN DIVISION,

Case Title: The State v Muzebi Masikilo	e No: CR 139/2022
Heard before: Hon. Judge Shivute <i>et</i> Hon. Judge January	Division of Court: Main Division
Delivered on: 8 December 2022	
Neutral citation: <i>S v Masikilo</i> (CR 139/2022) [2022] NAHCMD 669 (8 December 2022)	
The order: The conviction and sentence are set aside and replaced with the following: The accused is convicted of the offence of housebreaking with intent to steal and sentenced to 18 months' imprisonment of which nine months are suspended for a period of five years on condition that accused is not convicted of housebreaking with intent to steal and theft, committed during the period of suspension.	
Reasons for order: SHIVUTE J (JANUARY J concurring): [1] This matter was referred to this court on automatic review in terms of section 302(1) of the Criminal Procedure Act (the CPA). [2] The accused was charged with the offence of housebreaking with intent to commit an offence unknown to the State.	

[3] The accused person pleaded guilty to the charge and the magistrate proceeded to question him in terms of the provisions of section 112(1)(b) of the CPA. Subsequently, he was convicted of housebreaking with intent to steal and theft and sentenced to 24 months' imprisonment of which 12 months are suspended for a period of five years on condition that accused person is not convicted of housebreaking with intent to steal and theft, committed during the period of suspension.

[4] I directed a query to the magistrate to enquire why the accused was convicted of housebreaking with intent to steal and theft instead of housebreaking with intent to steal.

[5] The magistrate conceded that he should have convicted the accused of housebreaking with intent to steal.

[6] The offence of housebreaking with intent to steal and theft was not proven as the accused did not take anything from the premises although he had the intention to steal, he was caught before he could leave with anything from the premises. Thus the accused was wrongly convicted. The conviction on housebreaking with intent to steal and theft will be set aside and substituted with housebreaking with intent to steal.

[7] In the result, it is ordered;

The conviction and sentence are set aside and replaced with the following:

The accused is convicted of the offence of housebreaking with intent to steal and sentenced to 18 months' imprisonment of which nine months are suspended for a period of five years on condition that accused person is not convicted of housebreaking with intent to steal and theft, committed during the period of suspension.

N N SHIVUTE Judge	H C JANUARY Judge