

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

PRACTICE DIRECTIVE 61

Case Title: <i>The State v Alfons Katembo</i>	Case No: CR 13/2023
High Court MD Review No: 84/2023	Division of Court: High Court, Main Division
Coram: Liebenberg J <i>et</i> Claasen J	Delivered: 7 February 2023
Neutral citation: <i>S v Katembo</i> (CR 13/2023) [2023] NAHCMD 37 (7 February 2023)	
ORDER: 1. The conviction and sentence on counts 1 and 3 are confirmed. 2. The conviction and sentence on count 2 are set aside.	
REASONS FOR ORDERS:	
LIEBENBERG J (CLAASEN J concurring):	

[1] The unrepresented accused appeared in the magistrate's court for the district of Rundu on count 1: Assault common read with section 1 of the Combating of Domestic Violence Act 4 of 2003; count 2: Assault by threat read with the provisions of the stated Act and count 3: Malicious damage to property.

[2] The accused pleaded guilty and was sentenced to: count 1 - N\$ 1000 or 4 months' imprisonment; count 2 - 6 months' imprisonment; count 3 - N\$ 1500 or 4 months' imprisonment. The conviction in respect of counts 1 and 3 are in order and will be confirmed on review. My qualm, however, lies with the conviction in count 2.

[3] The particulars of the charge are that, on or about the 19th day of December 2022 and at or near Dingandu village in the district of Rundu, the said accused did unlawfully and intentionally assault Nangura Mushikadoro by threatening to burn her house, thereby causing the said Nangura Mushikadoro, with whom the accused was in a domestic relationship as defined in s 1 of Act 4 of 2003, to believe that the said accused intended and had the means forthwith to carry out his threat.

[4] Whereas the conviction on count 2 is clearly not in accordance with justice and the accused to be prejudiced if a statement is first obtained from the presiding magistrate, I decline to invoke the provisions of s 304(2)(a) of the Criminal Procedure Act 51 of 1977.

[5] The learned author Snyman states the following as the requirements of the offence of assault by threat:

'(i) Personal violence: there must be a threat of violence against a person and that is against his or her body.

(ii) Immediate violence: It must be a threat of immediate violence. A mere threat to inflict harm on someone in the future is not sufficient.

(iii) Subjective test: The person who is being threatened must believe that the threat will be carried out by the person who is making the threat and s/he is able to do so.¹ (Emphasis provided)

[6] In the present matter the facts do not satisfy the requirements of assault by threat for reason that the accused threatened to burn down the house of the complainant which constitutes a threat against her property, not her body. For this reason the conviction on count 2 falls to be set aside.

[7] In the result it is ordered that:

1. The conviction and sentence on counts 1 and 3 are confirmed.
2. The conviction and sentence on count 2 are set aside.

J C LIEBENBERG
JUDGE

C CLAASEN
JUDGE

¹ C R Snyman *Criminal Law* 6 ed (2014) at 450.