

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

SPECIAL REVIEW JUDGMENT

Case Title: The State v Alpheus Paulus Ngalangi Hendrik Nghede Hidipo	Case No: HC Special Review No.:1342/2023 CR 102/2023
	Division of Court: High Court Main Division
Heard before: Honourable Justice Liebenberg <i>et</i> Honourable Lady Shivute	Delivered on: 12 October 2023
Neutral citation: <i>S v Ngalangi and Another</i> (CR 102/2023) [2023] NAHCMD 644 (12 October 2023)	
Order: 1. The entry of not guilty in respect of each accused as well as the whole proceedings on case no.: KRS-CRM 1043/2020 are set aside. 2. The matter is remitted to the court a quo for the magistrate to adjudicate the matter from plea stage and bring it to its natural conclusion.	
Reasons for order:	

Shivute J (Concurring Liebenberg J)

[1] This is a special review in terms of s 20(1)(c) of the High Court Act 16 of 1990, (the Act). The matter originated from the magistrate sitting in Karasburg. Section 304(4) of the Criminal Procedure Act 51 of 1977 (the CPA) is not applicable since the proceedings are not yet concluded.

[2] The record of proceedings is accompanied by a letter from the magistrate, explaining an irregularity that occurred. According to the magistrate, this matter initially reverted under Case No.:604/2020. Three accused persons were jointly charged. One of them pleaded guilty to the charges and was convicted after his counsel handed up a statement in terms of s 112(2) the CPA and sentenced accordingly.

[3] The co-accused persons, namely; Alfeus Paulus Ngalangi and Hendrik Nghede Hidipo were separated from the case, although the record of proceedings does not show that there was an application for separation of trials. However, there is a court order which shows that the matter was withdrawn against them.

[4] A new charge sheet was created under Case No.: 1043/2020, where both of them were jointly charged. On 16 April 2021, the State applied for the pleas taken from the two accused persons under case No.: 604/2020 to form part of the record. The court a quo simply adopted the irregular procedure by granting the application. The record on 13 November 2020 of Case No.: 604/2020 containing the pleas of the two accused persons became part of the record. The State further added counts to which the two accused persons pleaded not guilty. The trial started on 7 June 2022. The trial is still pending as the State has not yet closed its case.

[5] From the record, it appears that after the accused who pleaded guilty was convicted and sentenced, the court made an order that the case is withdrawn against Ngalangi and Hidipo. The reason for the withdrawal was reflected as separation of trials.

[6] This record is riddled with irregularity. The approach adopted by the magistrate to make an order for the matter to be withdrawn against the two accused persons after they had pleaded amounts to gross irregularities. In terms of section 6(a) of the CPA, the State can only withdraw the charge before the accused has pleaded, in which event the accused shall not be entitled to a verdict of an acquittal in respect of that charge.

[7] If the accused persons are jointly charged and one or more of them plead guilty to the charge and the court is satisfied that their pleas amount to unequivocal pleas of guilty, the correct procedure to be followed is for the prosecutor to ask for separation of trials in terms of section 157 of the CPA.

[8] Section 157(2) of the CPA reads as follows:

‘ Where two or more persons are charged jointly, whether with the same offence or with different offences, the court may at any time during the trial, upon the application of the prosecution or of any of the accused direct that the trial of any one or more of the accused shall be held separately from the trial of the other accused, and the court may abstain from giving judgment in respect of any of such accused.’

[9] Another serious misdirection that was committed by the court a quo is when the prosecutor made an application to transfer the pleas of not guilty from the initial case to the new case and the court a quo granted it by incorporating the initial court proceedings to the new case. Furthermore, the accused persons pleaded not guilty to the additional charges on the new case. As it appears now, the two accused persons’ pleas are recorded on two separate cases.

[10] When trials are separated after the guilty plea of one or more of the accused persons, the trial must start de novo and accused persons must plead afresh. *S v Kokule and Another* (CR 95/2022)[2022] NAHCMD 491 (20 September 2022).

[11] Due to the above gross misdirections the proceedings fall to be set aside.

[12] In the result the following order is made:

1. The entry of not guilty in respect of each accused as well as the whole proceedings on

case no.: KRS-CRM 1043/2020 are set aside.

2. The matter is remitted to the court a quo for the magistrate to adjudicate the matter from plea stage and bring it to its natural conclusion.

N N SHIVUTE
JUDGE

J C LIEBENBERG
JUDGE