

REPUBLIC OF NAMIBIA

HIGH COURT OF
WINDHOEK
REVIEW JUDGMENT



NAMIBIA MAIN DIVISION,

Case Title: <i>The State v Nathan De Bruyne</i>	Case No: 1792/2023 CR 118/2023
High Court MD Review No: 1792/2023	Division of Court: Main Division
Heard before: Ms Justice Shivute <i>et</i> Mr Justice January	Delivered on: 8 November 2023
Neutral citation: <i>S v De Bruyne</i> (CR118/2023) [2023] NAHCMD 715 (8 November 2023)	
The order: The sentence imposed is set aside as there was no conviction.	
Reasons for order: Shivute J (concurring January J) [1] This is a review matter stemming from the Magistrate's Court for the district of Walvisbay. The accused was sentenced for contempt of court in <i>facie curiae</i> contravening s108 of the Magistrates Court Act 32 of 1944, as amended. [2] The accused appeared for the first time on a charge of robbery. After his right to legal representation was explained, he chose to conduct his own defence. [3] The court inquired from him which plea he intended to tender. He stated that he would plead not guilty because the phone that is allegedly stolen belongs to him and he	

merely repossessed it. The State applied for a further postponement for further investigation and opposed for the accused to be granted bail.

[4] The court explained to the accused his right to apply for formal bail. Instead, the accused became unruly and used extremely vulgar language, of which I do not wish to repeat, towards the magistrate. The magistrate warned the accused to retract what he said or apologise, otherwise he would be convicted of contempt of court in *facie curiae*. The accused refused to retract what he said or apologise and continued with his unruly behaviour by shouting, interrupting the court.

[5] It is undoubtedly clear that what the accused said towards the magistrate was contemptuous and uncalled for. Unfortunately, it appears to me that the magistrate let her emotions get the better of her and overlooked to pronounce the accused guilty. Instead, she proceeded to sentence him to three (3) months' imprisonment without explaining to him his right regarding mitigation or affording him an opportunity to mitigate before sentencing.

[6] Judicial officers should endeavour to rise above emotions and maintain their cool-headedness throughout the trial, even amidst the most extreme provocation.

[7] The above glaring omissions by the court *a quo* amount to serious irregularities. Consequently, the proceedings in this matter cannot be said to be in accordance with justice.

[8] In the result, the following order is made:

The sentence imposed is set aside as there was no conviction.

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<p>N N SHIVUTE JUDGE</p>	<p>H C JANUARY JUDGE</p>
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