

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK
REVIEW JUDGMENT
PRACTICE DIRECTION 61

Case Title: The State v Heinert Engelbrecht and Dietele Jason	Case No: CR 28/2024
High Court MD Review No: 1949/2023	Division of Court: High Court, Main Division
Coram: January J <i>et</i> Christiaan J	Delivered: 17 April 2024
Neutral citation: <i>S v Engelbrecht</i> (CR 28/2024) [2024] NAHCMD 176 (17 April 2024)	
ORDER: <ol style="list-style-type: none">1. The conviction and sentence in respect of accused 1 is confirmed.2. The conviction in respect of accused 2 is confirmed.3. The sentence in respect of accused 2 is set aside and the matter is remitted to the magistrate to sentence accused 2 afresh, taking into account guidelines contained in the matter of <i>S v Rabie</i>.	

REASONS FOR ORDERS:

CHRISTIAAN J (JANUARY J concurring):

[1] The accused persons in this matter for review appeared before the Lüderitz Magistrate's Court on a charge of housebreaking with intent to steal and theft. Accused 2 pleaded guilty but on account of not having admitted all the elements of the crime, his guilty plea was substituted with a not guilty plea. Accused 1 pleaded not guilty and after evidence was led in respect of both accused, they were sentenced as follows:

'Accused 1 is sentenced to a period of 7 (seven) months' direct imprisonment.

Accused 2 is ordered to do community service for not exceeding 50 hours with counselling to be facilitated by the investigating social worker.

Accused 2 the child offender to be liaised with the social worker of Ministry of Health and Social Services to participate in their outpatient program or in default accused 2 will be sentenced to 7 (seven) months' direct imprisonment.'

[2] This court addressed the following query to the court a quo: 'Can the learned magistrate please explain why the provisions of s 297 of the Criminal Procedure Act 51 of 1977 and the legal principles laid down in in the matter of *S v Rabie* as confirmed by *S v Kangondjo* were not adhered to when the sentence for accused no 2 was framed?'

[3] The magistrate rightly concedes that the provisions of s 297 of the Criminal Procedure Act 51 of 1977 were supposed to be included in the formulation of the sentence. According to the magistrate, he relied on the State to present the place where the service would be rendered, the type of service to be rendered, during which time of the day the service is to be rendered and the person to supervise the accused. He asks that the matter be remitted to the trial court for accused 2 to be sentenced taking into account the guidelines contained in the matter of *S v Rabie*.¹

[4] The concession is rightly made and the formulation of the sentence as it currently stands lacks particularity and is ambiguous² and must be set aside.

¹ *S v Rabie* 1990 (1) SACR 616 (SWA).

<p>[5] In the result, it is ordered:</p> <ol style="list-style-type: none">1. The conviction and sentence in respect of accused 1 is confirmed.2. The conviction in respect of accused 2 is confirmed.3. The sentence in respect of accused 2 is set aside and the matter is remitted to the magistrate to sentence accused 2 afresh, taking into account guidelines contained in the matter of <i>S v Rabie</i>.³	
<p>P CHRISTIAAN JUDGE</p>	<p>H C JANUARY JUDGE</p>

² *The State v Kangondjo* (CR 35/2012) [2013] NAHCMD 153 (7 June 2013).

³ *Supra*.