

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

PRACTICE DIRECTION 61

<b>Case Title:</b> The State v Erastus Nametemba Maketo	<b>Case No: CR 35/2024</b>
<b>High Court MD Review No:</b> 503/2024	<b>Division of Court:</b> High Court, Main Division
<b>Coram:</b> Shivute J <i>et</i> Christiaan J	<b>Delivered on:</b> 6 May 2024
<b>Neutral citation:</b> <i>S v Maketo</i> (CR 35/2024) [2024] NAHCMD 211 (6 May 2024)	
<b>ORDER:</b> <ol style="list-style-type: none"><li>1. The conviction is set aside and replaced with a conviction of malicious damage to property to wit, one DSTV dish.</li><li>2. The sentence is set aside and replaced with a fine of N\$1500 or three (3) months' imprisonment. Sentence backdated to 29 February 2024.</li></ol>	

**REASONS FOR ORDERS:**

SHIVUTE J (CHRISTIAAN J concurring):

[1] The accused in this case was charged with malicious damage to property, namely one (1) DSTV dish and three (3) windows valued at N\$2055 in the magistrate's court for the district of Rundu. The accused pleaded guilty and the magistrate proceeded to question him in terms of section 112(1)(b) of the Criminal Procedure Act 51 of 1977, as amended (the CPA).

[2] During the questioning, the magistrate only asked questions pertaining to the DSTV dish and no questions were posed by him pertaining to the windows, thus accused did not answer to questions about the windows. After the questioning, the accused was found guilty 'as charged' and was sentenced to a fine of N\$2000 or to six (6) month's imprisonment.

[3] When the matter came before me on review, I queried the magistrate as to how he satisfied himself that the accused admitted all the allegations as stated in the charge for him to be convicted as charged, if there were no questions asked pertaining to the malicious damage of three windows.

[4] The magistrate replied that it was an oversight from the court to not ask questions pertaining to the three windows and that the court should have indicated on the record that the accused was found guilty on the value of the DSTV dish alone, after the State accepted the plea.

[5] This concession by the magistrate is correctly made.

[6] As a result, the following order is made:

1. The conviction is set aside and replaced with a conviction of malicious damage to property to wit, one DSTV dish.
2. The sentence is set aside and replaced with a fine of N\$1500 or three (3) months' imprisonment. Sentence backdated to 29 February 2024.

**N N SHIVUTE  
JUDGE**

**P CHRISTIAAN  
JUDGE**