

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

PRACTICE DIRECTION 61

Case Title: The State v Lionel Natangwe Lodewyk	Case No: CR 40/2024
High Court MD Review No: 611/2024	Division of Court: High Court, Main Division
Coram: Shivute J <i>et</i> Christiaan J	Delivered: 17 May 2024
Neutral citation: <i>S v Lodewyk</i> (CR 40/2024) [2024] NAHCMD 235 (17 May 2024)	
ORDER: a) The proceedings of 2 April 2024 are set aside. b) The matter is remitted to the trial court for the correct procedure to be followed.	
REASONS FOR ORDERS:	

CHRISTIAAN J (SHIVUTE J concurring):

[1] This matter comes before this court on special review as transmitted by the district magistrate Grootfontein to have the proceedings of 2 April 2024 reviewed and set aside. The reasons for this will become apparent as the judgment unfolds.

[2] The accused was arraigned with one other accused, in the magistrate's court for the district of Grootfontein on a charge of housebreaking with intent to steal and theft to which charge he pleaded not guilty on 23 September 2021 and elected to conduct his own defence.

[3] On account of various postponements for reasons not material for purposes of this judgment, the accused appeared before the court a quo again on 2 April 2024. His case was separated from that of his co-accused upon which, he tendered a guilty plea and subsequently sentenced to 24 months' imprisonment.

[4] According to the court a quo, it only came to realise that in fact, the accused had already pleaded not guilty before a different magistrate on 23 September 2021. Although the cover letter to which the special review is attached indicates that the initial plea was taken on 9 September 2021, the record shows otherwise. As per the record, there was in fact, a not guilty plea tendered on 23 September 2021. This notwithstanding, the court a quo takes cognizance of its oversight and acknowledges the fact that the correct procedure to have been followed in the circumstances was to proceed with trial and not allow the accused to plead to the charge again.

[5] It goes without saying that, an accused person is not allowed to plead twice to the same charge in the same case¹. What transpired in the present instance is an irregularity which vitiates the proceedings and which cannot be allowed to stand. It follows therefore, that the proceedings of 2 April 2024 cannot be allowed to stand and must be reviewed and set aside and the correct procedure followed.

[6] In the result, it is ordered as follows:

¹ *S v Witbooi* (CR 62/2022) [2022] NAHCMD 324 (29 June 2022).

- a) The proceedings of 2 April 2024 are set aside.
- b) The matter is remitted to the trial court for the correct procedure to be followed.

P CHRISTIAAN
JUDGE

N N SHIVUTE
JUDGE