

REPUBLIC OF NAMIBIA



**HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION
HELD AT OSHAKATI**

REVIEW JUDGMENT

CASE NO: CR 10/2018

THE STATE

v

SACKARIA SAMUEL

1ST ACCUSED

GABRIEL FRANS

2ND ACCUSED

THE STATE

v

ELIFAS EKANDJO

1ST ACCUSED

PETRUS MATIAS

2ND ACCUSED

THE STATE

v

GABRIEL FRANS

1ST ACCUSED

SAMUEL SACKARIA SHIPANGA

2ND ACCUSED

THE STATE

v

JOHANNES JOHANNES

1ST ACCUSED

PAHURA DOMINGU

2ND ACCUSED

ANGALA SIMON

3RD ACCUSED

HIGH COURT NLD REVIEW CASE REF NO: **56/2018**

HIGH COURT NLD REVIEW CASE REF NO: **47/2018**

HIGH COURT NLD REVIEW CASE REF NO: **64/2018**

HIGH COURT NLD REVIEW CASE REF NO: **65/2018**

Neutral citation: *S v Samuel; S v Ekandjo; S v Frans; S v Johannes* (CR 10/2018) [2018] NAHCNLD 14 (09 February 2018)

Coram: CHEDA J et JANUARY J

Delivered: **09 February 2018**

Flynote: Where there are more than one accused each and every accused must plead and separately each response should be recorded separately. This is a basis requirement as it ensures a fair trial.

Summary: The trial magistrate in conducting the trials put questions to accused and recorded their answers as 'both'. This was improper as each and every accused is entitled to respond separately. This was an irregularity which violates all the proceedings. The proceedings were set aside and the matters were referred for a trial de novo before different magistrates.

ORDER

1. All the proceedings are quashed and set aside.
2. The matter is referred back for trial de novo before different magistrates.
3. In the event of convictions, the sentences should not exceed those passed by the courts a quo.

JUDGMENT

CHEDA, J (JANUARY J concurring):

[1] The above matters were referred to me by way of review procedure. They are from the same magistrate and they present the same problem. It is for that reason that I have decided to deal with them in one judgment.

[2] Accused were jointly charged with different charges and they pleaded guilty. However, upon perusal of the records I noticed that the learned trial magistrate was posing questions and the answers were being recorded as 'both guilty' and the same procedure was being applied for essential elements. This poses a problem to a reviewing Judge as it is not clear what each accused said in response to the question put by the magistrate.

[3] An accused is entitled to a fair trial, that entails a clear understanding of the question posed to him and the answer should be clearly recorded in order to ensure that he/she understands what is being asked of him/her.

[4] It is improper to ask a question and record the responses as if the accused were answering at the same time. The proper and ideal procedure is to record all the answers from each accused separately, see *S v Faber* 1979 (1) SA 710 (NC) (headnote).

[5] It seems to me there has been a serious irregularity in these matters which vitiates the proceedings. There has been a serious miscarriage of justice. Judicial officers should always remember that they are dealing with human beings and not animals. The irregularities in these matters go to the root of the proceedings and therefore vigorously assault all the basic tenets of our judicial system. It should be born in mind that irrespective of the pressure of work, a presiding officer should not adopt a cut-throat approach in legal proceedings as this offends and assaults the others of justice. Justice cannot and should not be sacrificed on the altar of expedience.

[6] Those proceedings cannot be allowed to stand as they are not in accordance with real and substantial justice. The irregularities are so glaring so much that they cannot be cured by any other remedy other than their setting aside. Accordingly the following is the order:

1. All the proceedings are quashed and set aside.
2. The matter is referred back for trial de novo before different magistrates.
3. In the event of convictions, the sentences should not exceed those passed by the courts a quo.

M Cheda
Judge

HC January
Judge