



"ANNEXURE 11"
IN THE HIGH COURT OF NAMIBIA

Case Title: <i>The State v Martinus Kauthike Linus</i>	CR 42/2018 Division of Court: Northern Local Division
Heard before: Honourable Ms. Justice Tommasi J <i>et</i> Honourable Mr. Justice January J	Delivered on: 21 September 2018
Neutral citation: <i>S v Linus</i> (CR 42/2018) [2018] NAHCNLD 91 (21 September 2018)	
The order: <ol style="list-style-type: none">1. The conviction and sentence for contempt of court are set aside;2. The conviction of theft is set aside and substituted with a conviction of housebreaking with the intent to steal and theft;3. The matter is remitted to the same magistrate, if available, for the court to consider sentence afresh.	
Reasons	
TOMMASI J (JANUARY J concurring): <ol style="list-style-type: none">1. Failure of accused on bail to remain in attendance. Section 67(1)(b) of Criminal Procedure Act 51 of 1977 provides that accused under these circumstances to forfeit bail. He cannot be convicted of contempt of court. (See <i>S v Paulus</i> 2007 (2) NR 622 (HC))2. The accused admitted that he pushed a door open which was slightly open. The element of breaking in has been proven beyond reasonable doubt. The court ought to have convicted the accused of housebreaking with intent to steal and theft.	
	
M A TOMMASI JUDGE	H C JANUARY JUDGE


CR 42/2018

IN THE HIGH COURT OF NAMIBIA: NORTHERN LOCAL DIVISION
HELD AT OSHAKATI: 17 SEPTEMBER 2018
BEFORE THE HONOURABLE MS JUSTICE TOMMAS J
MR JUSTICE JANUARY J

In the matter between:

STATE

v

MARTINUS KAUTHIKE LINUS

ACCUSED

Having considered the matter in chambers and having read the documents filed of record:

IT IS ORDERED THAT:

1. The conviction and sentence for contempt of court are set aside;
2. The conviction of theft is set aside and substituted with a conviction of housebreaking with the intent to steal and theft;
3. The matter is remitted to the same magistrate, if available, for the court to consider sentence afresh.

BY ORDER OF COURT



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