

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION, OSHAKATI

REVIEW JUDGMENT

Case Title: <i>The State v Kasbert Milinga Iyanabu</i>	CR No.: 16/2020 Case No: OSH-CRM 5032/2018
Heard before: Honourable Mr Justice January J <i>et</i> Honourable Mrs Justice Salionga J	Division of Court: Northern Local Division Delivered on: 12 March 2020
Neutral citation: <i>S v Iyanabu</i> (CR 16/2020) [2020] NAHCNLD 41 (12 March 2020)	
The order: <ol style="list-style-type: none">1. The conviction and sentence of housebreaking with intent to steal and theft are set aside.2. The case is remitted to the magistrate with a direction that he records a plea of not guilty as required by s 113 of the Act and proceeds with the trial.	
Reasons for the order:	

JANUARY J (SALIONGA J concurring):

[1] The accused was convicted on his plea of guilty for housebreaking with intent to steal and theft. He was sentenced to 24 months imprisonment of which 12 months are suspended for a period of 3 years on condition that the accused is not convicted of housebreaking with intent to steal and theft committed during the period of suspension.

[2] The proceedings are not in accordance with justice. The accused replied in the questioning in terms of section 112(1)(b) that he took a laptop worth N\$6000 through an open window.

'A breaking is an essential element of the crime of housebreaking with intent to steal and for there to be a breaking there must be a displacement of part of the premises in question. To enter through a door or window which is already open is not a breaking. See *S v Johannes Maarman* Review Case 507/91; *S v Festus Pauluq* Review G Case 1282/91 and *S v Jonas Flangula* Review Case 1390/91. I mention these three recent review cases because I should have expected the magistrate to have read them even if he has not read *Hunt South African Criminal Law and Procedure* vol II 2 ed at 707-10 and the cases there cited. To say, as the magistrate did, that to put a finger through an open window amounts to housebreaking shows a complete misunderstanding of the H offence.¹

Judge(s) signature	Comments:
January J:	
Salionga J	

¹ *S v Markus and others* 1992 NR 230 (HC) at 231 F-H