

REPUBLIC OF NAMIBIA



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

REVIEW JUDGMENT

Case Title: <i>S v Tjooya Vandinga Lisias and Mwatjoka Mulele</i>	CR No: 4/2022 Review No.: Ruacana 47/2020
	Division of Court: Northern Local Division
Heard before: Honourable Ms. Justice Salionga J <i>et</i> Honourable Mr. Justice Kessler AJ	Delivered on: 23 February 2022
Neutral citation: <i>S v Lisias</i> (CR 4/2022) [2022] NAHCNLD 13 (23 February 2022)	
IT IS ORDERED THAT: <ol style="list-style-type: none">1. The conviction on the review cover sheets is corrected to read a conviction of housebreaking with intent to steal and theft.2. The sentence is confirmed.	
Reasons for the above order:	
SALIONGA J (KESSLAU AJ concurring): [1] Two accused were charged and convicted of housebreaking with intent to steal and theft with alternative charge of possession of suspected stolen property in respect of accused no. 1.	

[2] Accused one pleaded not guilty to the main and alternative charges whilst accused two pleaded guilty. Accused 2's guilty plea was altered to not guilty in terms of section 113 of the Criminal procedure Act 51 of 1977 as amended because he stated that he had no intention to break in as he was drunk. After the evidence was led they were both convicted as charged.

[3] The record clearly indicates that the magistrate in her decision relied on a doctrine of recent possession in finding the accused guilty on the main charge. However the review cover sheets indicate a conviction of housebreaking with intent to steal and theft, alternatively possession of suspected stolen property in respect of accused one which is unclear and confusing.

[4] A query was directed to the magistrate to clarify as the conviction should either be on the main charge of housebreaking with intent to steal and theft or on the alternative count of possession of suspected stolen property.

[5] The learned magistrate responded that accused 1 and 2 were charged with housebreaking with intent to steal and theft and the alternative charge of possession of suspected property was only in respect of accused 1. The evidence led showed that relying on the doctrine of recent possession both accused were convicted as charged. She conceded that the fact that the review cover sheets indicate a conviction of both housebreaking with intent to steal and theft and alternative charge was an error by the typist clerk. The correct offence accused 1 and 2 were convicted of is correctly indicated on record and the sentence of 24 months each is in respect of the main charge of housebreaking with intent to steal and theft.

[6] The court has no reason to doubt the clarity given by the magistrate and the conviction as it stands on the review cover sheets stands to be corrected. The conviction and sentence appear to be in accordance with justice.

<p>[7] Consequently;</p> <ol style="list-style-type: none">1. The conviction on the review sheets is corrected to read both accused convicted of housebreaking with intent to steal and theft.2. The sentence is confirmed.	
<p>J. T. SALIONGA JUDGE</p>	<p>E. E. KESSLAU ACTING JUDGE</p>