

REPUBLIC OF NAMIBIA



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

REVIEW JUDGMENT

Case Title: <i>The State v Venaani Tjombe</i>	Case No: CR 01/2023
	Division of Court Northern Local Division
Heard before: Honourable Lady Justice Salionga J <i>et</i> Honourable Mr. Justice Kessler AJ	Delivered on: 10 February 2023
Neutral Citation: <i>S v Tjombe</i> (CR 01/2023) [2023] NAHCNLD 06 (10 February 2023)	
The order: <ol style="list-style-type: none">Both the conviction and sentence are set aside.The matter is remitted to Ondangwa Magistrates Court for the Magistrate to act in accordance with the provisions of s 312 of the Criminal Procedure Act 51 of 1977.In case of a conviction it is directed that the period already served by the accused be considered during sentencing.	
Reasons for order:	
SALIONGA, J (KESSLAU, AJ concurring): [1] This matter was received pursuant to review proceedings in terms of section 302 of the Criminal Procedure Act ¹ (the CPA) from the magistrate sitting at the Ondangwa district court. The unrepresented accused person was charged with crimes of forgery and uttering as a single count. He pleaded guilty, was questioned and sentenced to 12 (twelve) months' imprisonment of which eight (8) months was suspended for a period of 3 (three) years on condition that the accused is not convicted of forgery and uttering, committed during the period of suspension.	

¹ Act 51 of 1977.

[2] The allegations in count one, amongst others are that, (1) upon or about the 13th day of November 2020 at Ondangwa Home Affairs in the district of Ondangwa, the accused did unlawfully, falsely and with intent to defraud and to the prejudice of Kamati Sakeus or the Ministry of Home Affairs forge an instrument in writing to wit a full birth certificate and (2) In that upon or about the 13th day of November 2020 and at or near Ondangwa in the district of Ondangwa the accused did unlawfully, falsely and with intent hereby to defraud, and to the prejudice of Kamati Sakeus or Ministry of Home Affairs offer, utter and put off the forged document described in the preceding count to Kamati Sakeus well knowing it to have been forged.

[3] On review, I addressed the following queries for the attention of the learned magistrate.

'1. How did the Magistrate satisfy himself that the accused admitted all the elements of the offence if no question was asked whether accused forged a document he presented?

2. Why was a plea of not guilty in terms of s113 of the CPA not entered after the accused replied that he did not know it was unlawful to present a false document.'

[4] The magistrate in her response to the queries conceded that no question was asked whether accused indeed forged the document he presented to the officials and therefore this element was not admitted by the accused. On the second query she also conceded that a plea of not guilty should have been entered in terms of s113 of CPA after the accused answered that he did not know that it was unlawful to present a false document.

[5] That being the case, it is crystal clear from the questioning that the accused did not admit all the elements of the offence of forgery and uttering. As such a plea of not guilty should have been entered in terms of section 113 of Act 51 of 1977. Therefore the conviction and eventually the sentence cannot be allowed to stand.

[6] In the result, the following order is made;

1. Both the conviction and sentence are set aside

2. The matter is remitted to Ondangwa Magistrates Court for the Magistrate to act in

accordance with the provisions of s 312 of the Criminal Procedure Act 51 of 1977.

3. In case of a conviction it is directed that the period already served by the accused be considered during sentencing.

J T SALIONGA JUDGE	E E KESSLAU ACTING JUDGE