

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA  
MAIN DIVISION, WINDHOEK  
REVIEW JUDGMENT  
PRACTICE DIRECTIVE 61

<b>Case Title:</b>  The State  v  Pubilo Chester Cizoka                      Accused	<b>Case No:</b> CR 60/2023  <b>High Court Review No:</b> 575/2023  <b>Division of Court:</b> High Court, Main Division
<b>Heard before:</b> D Usiku J <i>et</i> Christiaan AJ	<b>Delivered on:</b> 5 June 2023
<b>Neutral citation:</b> <i>S v Cizoka</i> (CR 60/2023) [2023] NAHCMD 293 (5 June 2023)	
<b>ORDER:</b>	
<ol style="list-style-type: none"><li>1. The conviction and sentence are set aside.</li><li>2. The matter is remitted to the Katima Mulilo Magistrate's Court, with the direction to enter a plea of not guilty in terms of s 113 of the Criminal Procedure Act 51 of 1977, as amended and to bring the proceedings to its natural conclusion.<sup>4</sup></li></ol>	

**REASONS FOR ORDERS:**

D Usiku J (Christiaan AJ concurring):

[1] The matter before us is an automatic review from the magistrate's court in terms of s 302 of the Criminal Procedure Act 51 of 1977 (the CPA), as amended.

[2] The accused appeared before the Katima Mulilo Magistrate's Court, charged with possession of suspected stolen property. The Accused pleaded guilty, whereafter he was questioned in terms of s 112 (1)(b)(the CPA), convicted and sentenced to one year imprisonment wholly suspended for a period of five years' on condition that accused is not convicted of the offence of possession of suspected stolen property, committed during the period of suspension.

[3] We find it necessary to quote verbatim the proceedings to emphasise the issue at hand. The record of proceedings reflects the following:

'Court: Did you fully understand the charge against you?

Accused: Yes

Court: Do you plead guilty out of your own free will?

Accused: Yes

Court: Were you influenced by anybody or promised anything of value to plead guilty?

Accused: No

Court: Did anyone force you for you to come and plead guilty today?

Accused: No

Court: What is it that you did that you are pleading guilty to?

Accused: On 28 August 2021, I was found in possession of suspected stolen goods.

These were: 10x sprays, 10x signature deodorants and a black.

Court: Where was this happening?

Accused: In my room at home at Lyambai, in the district of Katima Mulilo.

Court: What is the value of these items?

Accused: I am told it was above N\$7,000

Court: Did you have any right or lawful excuse to be in possession of the identified items?

Accused: No

Court: Did you know that what you were doing was unlawful and wrongful?

Accused: Yes, I did

Court: Why did you do it nonetheless to do it nonetheless?

Accused: I wanted to sell and generate money to help my family.

Court: What led to your arrest?

Accused: It was around 20h00 when the police came. I don't know how they found me.

Court: Were the items stolen

Accused: Yes

Court: Where the items stolen

Accused: From signature store

Court: How did you end up in the possession of the suspected items?

Accused: I use to do sales, so I suspected someone reported me that I am selling stolen items

Court: Where did you get the items?

Accused: I am a trader. I bought the goods from other traders.

Court: Did you suspect at the time that such goods where stolen

Accused: No

Court: Where you unable to give satisfactory explanation to the Police?

Accused: The IO is Eunice Makandauko and I explained to her where I got the items.

Court: Why are you pleading guilty to this charge

Accused: I am the one who was found in possession of goods.

PP: State accepts the plea

Court: The Court is satisfied that you have admitted all the elements in the charge, therefore, Accused is found guilty as charged.' (*sic*)

[4] It is evident from the proceedings that the accused indicated that he did not know that the goods found in his possession were stolen. At this stage of the proceedings, the court should have invoked the provisions of s 113 of the CPA and note a plea of not guilty. This, the court failed to do, and instead continued to question the accused. The court pronounced itself being satisfied that the accused was guilty of the offence charged and convicted him accordingly.

[5] On first consideration of the review, the following query was directed to the

learned magistrate:

'Why was the accused person convicted in terms of Section 112(1) (b) of the Criminal Procedure Act 51 of 1977, as amended notwithstanding that accused person indicated that he did not know that the goods found in his possession were stolen property. Can the learned Magistrate kindly explain?'

[6] The learned magistrate responded as follows:

'I now see my error, there was no need to proceed with the matter when the accused stated that he did not know that goods were stolen. The correct procedure would have been to apply section 113 of Act 51 of 1977.

I request the Review Judge to set aside the conviction and sentence, in order to allow the matter to proceed to trial.

Further, I stand to be guided by the Review Judge.'

[7] The concessions made by the learned magistrate are indeed correctly made and this court is of the view that the learned magistrate ought to have entered a plea of not guilty in terms of s 113 of the CPA, as amended.

[8] In the result, the following orders are made:

1. The conviction and sentence are set aside.

2. The matter is remitted to the Katima Mulilo Magistrate's Court, with the direction to enter a plea of not guilty in terms of s 113 of the Criminal Procedure Act 51 of 1977, as amended and to bring the proceedings to its natural conclusion.

<b>D USIKU</b>	<b>P CHRISTIAAN</b>

<b>JUDGE</b>	<b>ACTING JUDGE</b>
--------------	---------------------