

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

SPECIAL REVIEW JUDGMENT

Case Title: <i>The State v Estevao Obed Chabeni</i>	Case No: CR 13/2024
High Court MD Review No: 138/2024	Division of Court: Main Division
Heard before: Shivute <i>et</i> January J	Delivered on: 16 February 2024
Neutral citation: <i>S v Chabeni</i> (CR 13/2024) [2024] NAHCMD 60 (16 February 2024)	
The order: The conviction and sentence imposed are set aside.	
Reasons for order: 	

SHIVUTE J (concurring JANUARY J)

[1] This matter came on special review from the Omaruru Magistrate's Court. The accused was charged with contravening section 6 read with sections 1, 2 and 10 (3) of the Immigration Control Act 7 of 1993 - Entry into Namibia at any place other than a port of entry.

[2] The magistrate raised concerns in a covering letter, stating that he is not certain whether the Omaruru Magistrate's Court had jurisdiction to preside over a port of entry violation since Omaruru is not a port of entry nor within such jurisdiction. The magistrate further explains that he was conflicted on whether to transfer the matter to a court having jurisdiction or a change in the charge, like the accused being found in Namibia without relevant documentation.

[3] The charge sheet alleges that:

'Upon or about the unknown day of August 2021 at or near Namibian border in the district of Namibia, the accused did wrongfully and unlawfully enter Namibia at an unknown place being a place other than a port of entry, without:

(a) his passport bearing an endorsement by the Minister; or by an immigration officer; granting him permission to enter Namibia at that place and to be in Namibia for such purposes and during such period and subject to such conditions as may be stated in that endorsement or such document.'

[4] The accused pleaded guilty to the charge and the court proceeded to question him in terms of section 112 (1) (b) of the Criminal Procedure Act 51 of 1977.

[5] After questioning the accused, the magistrate found him guilty as charged. The accused was sentenced to 'two thousand Namibian dollars (N\$2000) or in default of payment to three (3) months' imprisonment, wholly suspended for a period of three (3) years, on condition that accused is not convicted of the offense of entry into

Namibia at any place other than a port of entry in contravention of section 6, 1, 2 and 10 (3) of the Immigration Control Act 7 of 1993 committed during the period of suspension.'

[6] Although the charge sheet reflects that the point of entry is unknown, it is apparent from the record that the accused admitted to having entered Namibia at a port of entry, namely, Oshikango border post.

[7] The point of entry having become known to the magistrate and prosecutor during the magistrate's questioning of the accused and it being evident that the point of entry was not within the jurisdiction of the court a quo, the magistrate had no basis to assume jurisdiction and to preside over the matter.

[8] It follows that the concerns of the magistrate were rightly raised.

[9] In the result, it is ordered that:

The conviction and sentence are set aside.

N N SHIVUTE JUDGE	H C JANUARY JUDGE