

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

FREDRIKA APRIL

(HIGH COURT SPECIAL REVIEW CASE NO.: 70/2006)

CORAM: DAMASEB, J.P. *et* NDAUENDAPO, A.J.

Delivered on: 2007.07.17

SPECIAL REVIEW JUDGMENT

NDAUENDAPO, A.J.: [1] This matter was referred on Special Review by Magistrate B T Mudhana of the Lüderitz District Court. The accused appeared before Mr B Mudhana on a charge of concealment of birth “in that upon or during 16th and 22nd of July 2004 at or near Rosh Pinah in the district of Lüderitz the accused did unlawfully and with the intent to conceal the birth of a child that died before, during or after

birth dispose of the dead body of the said child.”

In a letter dated 18 August 2006 and addressed to the Honourable Review Judge, the magistrate clarified the reason why the matter was referred for special review.

The letter states:

“Re: *State v Fredrika April* Case No. 70/2006

The above matter appeared before me for hearing. Accused pleaded guilty and I did a Section 112(1)(b) enquiry and found the accused guilty as pleaded. We could not proceed to sentence accused since she wanted to call a witness to testify in mitigation on her behalf. I then discovered that the accused’s right to legal representation had not been explained. I then decided to put this matter for special review since this is a serious irregularity.”

The accused pleaded guilty to the charge. Part of the examination in terms of Section 112(1)(b) of Act 51 of 1977 proceeded as follows:

“Court: Tell the Court what (sic) you have pleaded guilty to.

Accused: I gave birth to a still-born baby and I threw her in the dustbin.

Court: Did you know that it is an offence to conceal a birth?

Accused: No.

Court: Did you know that it is unlawful to conceal birth?

Accused: No.”

The magistrate then found the accused guilty as pleaded. The magistrate should not have convicted the accused as there was no admission of all the elements of the offence by the accused.

A plea of not guilty should have been entered by the magistrate.

In the result the verdict of guilty is set aside and substituted by a verdict of not guilty.

The matter is referred back to the magistrate in order for the trial to start *de novo*. The magistrate is also directed to fully explain the rights of the accused, including (but not limited to) the right to legal representation.

NDAUENDAPO, A.J.

I agree

DAMASEB, J.P.