

CASE NO.: CR 138/07

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

CHRIS GAOAB

[HIGH COURT REVIEW CASE NO.: 1496/07]

CORAM: , J et SILUNGWE, AJ

Delivered on: 2007 September 25

REVIEW JUDGMENT

PARKER, J.:

[1] The accused pleaded guilty to malicious damage to property (Count 1) and assault with intent to do grievous bodily harm (Count 2). After questioning the accused the learned Magistrate corrected the plea of guilty and entered a plea of not guilty in respect of Count 2 in terms of s. 113 of the Criminal Procedure Act, 1977 (Act 51 of 1977). Since the State offered no evidence, the accused was acquitted on Count 2. But the learned Magistrate convicted the accused on his plea of guilty on Count 1 and sentenced him to 24 months' imprisonment.

[2] The case is submitted for automatic review. Accompanying the record is a letter under the hand of the learned Magistrate in which the learned Magistrate *ex mero motu* admits that he made mistakes when he did not question the accused on the wrongfulness and unlawfulness of his act and on the ownership of the property in question. Thus, the learned Magistrate admits that the proceedings were not in accordance with justice.

[3] In the result, I make the following orders:

- (1) The conviction and sentence on Count 1 are set aside.

- (2) The matter is referred back to the trial court to enable it to summon the accused and to comply with s. 112 (1) (b) of the CPA in respect of Count 1.

Parker, J

I agree.

Silungwe, AJA