



CASE NO.: CR 80/2011

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

and

RICARDO KORNER

GERT KOCK

(HIGH COURT REVIEW CASE NO.: 537/2011)

(MAGISTRATE'S SERIAL NO.: 22/2011)

CORAM: PARKER, J et SHIVUTE, J

Delivered on: 2011 August 24

REVIEW JUDGMENT

SHIVUTE, J: [1] The accused persons appeared before the Magistrate, Windhoek on a charge of stock theft. It is alleged that on the 12 December 2009 at Farm Gaub West in the district of Windhoek the said

accused persons did unlawfully and intentionally steal stock to wit seven sheep the property of or in the lawful possession of John Abraham Ockhuizen valued at N\$5760.00.

[2] Both accused persons pleaded guilty and the court applied section 112 1(b) of Act 51 of 1977. They both admitted all the allegations and elements of the offence and they were convicted accordingly. The district court magistrate then referred the matter for sentencing to the Regional Court. At the time the accused persons appeared before the District Court they were not legally represented.

[3] When the matter came before the Regional Court both accused persons were represented. The prosecutor informed the court that the accused persons want to change their plea from theft of seven sheep to theft of one sheep. The State Prosecutor further informed the Court that he had consulted with the complainant and that he would accept the plea.

[4] The Court instead of entering a plea of not guilty in terms of Section 113 of the Criminal Procedure Act, allowed counsel for the defence to call the two accused persons to testify in mitigation of sentence. After both accused persons testified in mitigation, the Regional Magistrate realized that he made an error. As a result of this, he then forwarded the matter for Special Review.

[5] In his covering letter accompanying the record of proceedings he stated the following:

"I realized that I misdirected myself for allowing that procedure to take place. The proper procedure, I now realised, was to enter or note a plea of not guilty in terms of Section 113 Act 51 of 1977 and have the State evidence on the quantity and value of the stolen stock. Alternatively both accused persons through their lawyer could have made formal admissions setting out the quantity and the value of what they stole. Where after the State may either accept the admissions made or decide to call more witnesses. In the result, I request the Honourable Reviewing Judge to set aside the proceedings of this court for the 28 January 2011 and remit the matter back to this court with any guidance the Honourable Reviewing Judge may recommend."

[6] I fully agree with the proposition made by the learned magistrate. The magistrate ought to have noted a plea of not guilty in terms of Section 113 of Act 51 of 1977. The procedure he followed was an irregular one.

[7] In the result the proceedings which took place on 28 January 2011 is set aside. The matter is remitted back to the Regional Magistrate to enter a plea of not guilty in terms of Section 113 of the Criminal Procedure Act.

SHIVUTE, J

I agree

PARKER, J