

REPUBLIC OF NAMIBIA

REPORTABLE



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CR 59/2013

In the matter between:

THE STATE

and

EMILIANO PEDRO

ACCUSED

Neutral citation: *State v Pedro* (CR 59/2013) [2013] NAHCMD 252 (06 September 2013)

Coram: CHEDA J and SIBOLEKA J

Delivered: 06 September 2013

Flynote: Criminal procedure. An allegation the accused advances in his answers to any of the questions put to him by Court in terms of Section 112(1)(b) of Act 51 of 1977, that puts an element of the charge in dispute should alert the Court that a plea of guilty has not been properly tendered. Such a conduct clearly suggests the accused's innocent mindset. The questioning should immediately stop and a plea of

not guilty should be noted in terms of Section 113 of Act 51 of 1977 to give an opportunity for evidence to be lead if the prosecution so elects.

Summary: An accused pleaded guilty to theft of 16 (2kg each) bags of onion valued at N\$1 500.00. He told the Court they were thrown away and he picked them up to try and sell them to sustain himself and his family.

Held: Acquiring thrown away property puts the elements of theft into question because it suggests that the owner thereof no longer intends to use it thereby disconnecting his ownership from it.

Held: The Court erred in pronouncing itself as satisfied when the allegation that the onions were thrown away has not been discounted at all.

Held: In the result the offence of theft was not established against the accused, and both conviction and sentence are set aside.

REVIEW JUDGMENT

SIBOLEKA J (CHEDA J concurring):

[1] The 22 year old accused appeared in the Okahandja Magistrate's Court on a charge of theft of 16 bags of onion valued at N\$1 500.00. He pleaded guilty and was questioned in terms of Section 112(1)(b) of the Criminal Procedure Act, Act 51 of 1977 as amended. In his plea explanation it was crystal clear that he helped himself from discarded, rejected onions which were thrown away. He managed to sell some of them, but the last lot of 16 bags attracted the police's attention at the hiking point, resulting in his arrest.

[2] The charge the accused was facing reads:

“ANNEXURECASE NO: 2185/2011State v Emiliano Pedro and othersCount 1THEFT

That the accused is/are guilty of the crime of theft

In that upon or about the 17th September 2011 and at or near farm Swartkroon in the district of Okahandja the said accused did wrongfully and unlawfully and intentionally steal 16 bags (2kg each) of onions the property or in the lawful possession of Christo Van Zyl
Value N\$1 500.00”

[3] The elements of the above charge are wrongfulness, unlawfulness, and intention to take away the property, in this instance the onions which were the property of , or lawfully in the possession of Christo Van Zyl.

[4] Here is how the Oxford Advanced learners Dictionary of Current English by A S Hornby, Fifth Edition, Editor Jonathan Crowther describes ‘throw away’.

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Throw something away ... to dispose of something that is no longer wanted. That’s rubbish – you can throw it away ...”

[5] It is my considered view that the learned Magistrate had erred in pronouncing satisfaction when there was a valid and unshaken allegation of an innocent mindset before him.

[6] In the light of the above, the conviction and sentence cannot be allowed to stand and are hereby set aside. The Magistrate is ordered to refund the accused whatever amount of money he has paid as Court fine in this regard.

A M SIBOLEKA
Judge

M CHEDA
Judge