



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CR: 66/2013

In the matter between:

THE STATE

and

IVAN MUNGUNDA

ACCUSED

(HIGH COURT MAIN DIVISION REVIEW REF NO. 1370/2013)

Neutral citation: *State v Mungunda* (CR 66/2013) [2013] NAHCMD 307 (31 October 2013)

Coram: HOFF J and SHIVUTE J

Delivered: 31 October 2013

ORDER

- (a) The record of the proceedings is returned to the clerk of the court.
- (b) The presiding magistrate is ordered to attach the charge sheet to these proceedings and to remit the proceedings to the Registrar of the High Court.
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JUDGMENT

HOFF J (SHIVUTE J concurring):

[1] The accused was convicted at Aranos periodical court of the crime of assault by threat (read with the provisions of the Domestic Violence Act 4 of 2003) and sentenced to a fine of N\$500 or 2 months imprisonment. The fine was deferred on 13.06.2013 until 28.06.2013.

[2] On perusing the record of the proceedings I could find no charge sheet and directed a query to the magistrate in this regard.

[3] The magistrate replied as follows:

‘The accused was already charge (sic) on the charge sheet dated 13/6/2013. Namcis system does not allow printing the charge sheet twice, thus I made the sentence effective on the Court Order of 27/08/2013. I also confirm with Mariental Magistrate’s office and that has been done the same way.’

[4] It appears to me that the presiding magistrate did not comprehend my query. Section 76(1) of Act 51 of 1977 provides that unless ‘an accused has been summoned to appear before the court, the proceedings at a summary trial in a lower

court *shall* be commenced by lodging a charge sheet with the clerk of the court . . .’
Section 80 provides that an accused may examine the charge at any stage of the relevant criminal proceedings.

[5] The primary purpose of a charge sheet is that it informs the accused of the case the State intends to advance against him or her and it requires sufficient information of the offence with which the accused is charged. (*S v Hugo* 1976 (4) SA 536 (A); *S v Campbell and Others* 1991 (1) SACR 435 Nm).

[6] In terms of s 76(3)(a) the charge sheet shall form part of the record of the proceedings in lower courts.

[7] It is duty of the presiding officer to keep a proper record of the proceedings (*S v Haibeb* 1994 (1) SACR 657 (Nm) at 663i-j).

[8] Where there is no charge sheet, the Reviewing Judge will not know what the charge against the accused was and would not be in a position to certify whether the proceedings appear to be in accordance with justice.

[9] In the result the following order is made:

- (a) The record of the proceedings is returned to the clerk of the court.
- (b) The presiding magistrate is ordered to attach the charge sheet to these proceedings and to remit the proceedings to the Registrar of the High Court.

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E P B HOFF
Judge

N N SHIVUTE
Judge