



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CA 126/2013

In the matter between:

PETER EMVULA

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation: *Emvula v State* (CA 126/2013) [2014] NAHCMD 77 (28 February 2014)

Coram: HOFF J and SIBOLEKA J

Heard: 28 February 2014

Delivered: 28 February 2014 (*Ex tempore*)

Judg. made available: 11 March 2014

ORDER

The conviction and sentence are set aside.

JUDGMENT

HOFF J (SIBOLEKA J concurring):

[1] The appellant in this matter was convicted in the magistrate court of the offence of contravening s 51 of the Criminal Procedure Act 51 of 1977 namely, escaping from lawful custody and sentenced to seven months imprisonment.

[2] The submission by Ms Blaauw, counsel appearing on behalf of the appellant, *amicus curiae* is to the effect that there was no evidence placed before the court *quo* to prove that the detention of the appellant was lawful.

[3] Counsel appearing on behalf of the respondent in this matter Mr Nyambe, is in agreement. The court having perused the documents filed agrees that such evidence is absent.

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

The conviction and sentence are set aside.

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E P B HOFF
Judge

A M SIBOLEKA
Judge

APPEARANCES

APPELLANT:

S L Blaauw

Amicus curiae, Sharon Blaauw Attorneys

RESPONDENT:

S R Nyambe

Office of the Prosecutor-General, Windhoek