



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CA 128/2013

In the matter between:

RICHARD CLOETE

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation: *Cloete v State* (CA 128/2013) [2014] NAHCMD 78 (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 together with two other accused persons were arraigned in the magistrate's court on a charge of stock theft in contravention of the provisions of s 11 of Act 12 of 1990. He was convicted in the magistrate's court and the matter was then referred to the regional court for sentencing.

[2] It appears from the record, and this is also one of the grounds of appeal, that no evidence was lead in the magistrate's court which linked this appellant to the commission of the offence and this much was also now conceded by counsel appearing on behalf of the respondent in the appeal matter before us.

[3] A regional court has in terms of s 116 of the Criminal Procedure Act 51 of 1977 a limited review power where a matter has been referred to it, as in this instance, from the magistrate's court. However it appears for the reasons unknown to this court that the fact that no evidence was presented to link the appellant before us to the commission of the offence, that has escaped the attention of the regional court magistrate.

[4] In our view there is much merit in the submission that there was no evidence presented to the magistrate's court which linked the appellant before us with the commission of the offence of which he had been convicted of.

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

The conviction and sentence are set aside.

E P B HOFF
Judge

A M SIBOLEKA
Judge

APPEARANCES

APPELLANT:

Mr Ntinda

Amicus curiae, Sisa Namandje & Co. Inc.

RESPONDENT:

J Eixab

Office of the Prosecutor-General, Windhoek