

REPUBLIC OF NAMIBIA

NOT REPORTABLE



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK
REVIEW JUDGMENT

Case no: CR 18/2016

In the matter between:

THE STATE

And

JONAS KAREL

ACCUSED

(HIGH COURT MAIN DIVISION REF. NO. 337/2016)
(MAGISTRATE SERIAL NO. 10/2016)

Neutral citation: *State v Karel* (CR 18/2016) [2016] NAHCMD 69 (11 March 2016)

Coram: SIBOLEKA J AND USIKU J

Delivered: 11 March 2016

Flynote: Criminal Procedure: The authority to prosecute is vested in the State. The complainant cannot withdraw a matter where the accused has already pleaded and some witnesses testified.

Summary: The accused pleaded not guilty to a charge of Housebreaking with intent to steal and theft. Two prosecution witnesses finished testifying when the Court withdrew the matter at the instance of the complainant.

Held: The withdrawal was irregular.

ORDER

If the trial Magistrate is still in the employment of the Magistracy: The withdrawal is set aside. The Magistrate is directed to proceed with the hearing of evidence till finality.

If the trial Magistrate is no longer available, has left the Magistracy:

The proceedings are set aside and another Magistrate at the same station must start the matter afresh.

REVIEW JUDGMENT

SIBOLEKA J (USIKU J concurring):

[1] This is a review matter.

[2] The accused appeared before the Magistrate at Hosea Kutako on a charge of Housebreaking with intent to steal and theft. He pleaded not guilty and two witnesses completed giving their evidence when the Magistrate withdrew the matter at the instance of the complainant.

[3] Section 2 of the Criminal Procedure Act 51 of 1977 as amended reads:

“2 Authority to prosecute vested in state. –

- (1) The authority to institute and conduct a prosecution in respect of any offence in relation to which any Lower or Superior Court in the Republic exercises jurisdiction, shall vest in the state.”

[4] The withdrawal of the matter was irregular and cannot be allowed to stand.

[5] In the result I make the following order:

If the trial Magistrate is still in the employment of the Magistracy:

The withdrawal is set aside.

The Magistrate is directed to proceed with the trial till finality.

If the trial Magistrate has left the Magistracy and is no longer available:

The proceedings are set aside. The matter must start afresh before another Magistrate at the same station.

A M SIBOLEKA
Judge

D N USIKU
Judge