

REPUBLIC OF NAMIBIA

NOT REPORTABLE



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK
REVIEW JUDGMENT

Case No: CR 13/2017

In the matter between:

THE STATE

and

PAULUS HAUFIKU

ACCUSED

(HIGH COURT MAIN DIVISION REF. NO. 90/2017)
(MAGISTRATE REVIEW NO. 119/2016)

Neutral citation: *S v Haufiku* (CR 13/2017) [2017] NAHCMD 33 (10 February 2017)

Coram: SIBOLEKA J AND USIKU J

Delivered: 10 February 2017

Flynote: Criminal procedure: Questioning section 112(1)(b) of Act 51 of 1977 – purpose – should be halted immediately once the defense for committing the offence surfaced – not guilty plea *must* be endorsed in terms of section 113.

Summary: The accused was charged with assault with intent to do grievous bodily harm. During section 112(1) (b) questioning he told the Magistrate that they were fighting, *the complainant was on top of him wanting to beat him with a fist in the face that was when he bite him on the nose*. Despite this crystal clear defense the Magistrate continued questioning and convicted the accused.

Held: The 112(1)(b) questioning *and the resultant conviction* was irregular, because it was not established beyond reasonable doubt. My own emphasis

ORDER

In the result I make the following order:

The conviction and sentence are set aside.

REVIEW JUDGMENT

SIBOLEKA J (USIKU J concurring):

[1] The accused appeared before the Magistrate, Walvis Bay on a charge of assault with intent to do grievous bodily harm. He pleaded guilty and was questioned in terms of section 112(1)(b) of the Criminal Procedure Act 51 of 1977 as amended.

[2] The thrust of the charge he was facing indicated that “he did wrongfully, unlawfully and intentionally assault Johannes Amon by punching him repeatedly with fists and biting his nose with the intention to cause the said Johannes Amon grievous bodily harm”.

Section 113 of the Criminal Procedure Act 51 of 1977 states the following:

‘Correction of plea of guilty

If the Court at any stage of the proceedings under section 112 and before sentence is passed *is in doubt* whether the accused is in law guilty of the offence to which he has pleaded guilty or is satisfied that the accused does not admit an allegation in the charge or that the accused has incorrectly admitted any such allegation or *that the accused has a valid defence to the charge, the Court shall record* a plea of not guilty and require the prosecutor to proceed with the prosecution ...’my own emphasis

[3] In this matter the accused gave the following answer to the Magistrate:

‘Q: Tell the Court what lead to your arrest?’

A: We had a fight with the complainant, I injured him severally, I then went to the police to report myself and in order for him also to be taken to hospital.

Q: With what did you injure the complainant?

A: With my teeth *as we were fighting the complainant was on top of me so he wanted to beat me with a fist on my face, I hold onto his hands and I bit him with my teeth.*

[4] It is my considered view that the above italic explanation contains a valid defense which should not have satisfied the trial Court about the guilt of the accused beyond a reasonable doubt, *It clearly shows that the complainant was acting in self-defense.* The trial Court was legally bound to halt the questioning there and then and endorse a plea of not guilty in terms of section 113 of Act 7 of 1977. This route would have availed an opportunity to the prosecution to proceed with the calling of witnesses to get more clarity on the alleged defense.

[5] When the trial Court instead proceeded with the section 112(1)(b) questioning culminating in the conviction and sentencing of the accused it misdirected itself. This court is at liberty to interfere with the conviction on the matter.

[6] It is for this reason that both conviction and sentence should not be allowed to stand and are indeed set aside.

A M SIBOLEKA
Judge

D N USIKU
Judge