REPUBLIC OF NAMIBIA NOT REPORTABLE

HIGH COURT OF NAMIBIA, MAIN DIVISION

JUDGMENT

CASE NO: CR No: 16/2017

In the matter between:

THE STATE

and

THOMAS HAESEB **ACCUSED NO 1**

BERNADUS HAESEB **ACCUSED NO 2**

LAURENS GIUM **ACCUSED NO 3**

DESMOND VAN ROOYEN **ACCUSED NO 4**

HIGH COURT MD REVIEW CASE NO 1654/2016

Neutral citation: *S v Haeseb* (CR 16-2017) [2017] NAHCMD 41 (17 February 2017)

CORAM: **LIEBENBERG J *et* SHIVUTE J**

DELIVERED: **17 February 2017**

Flynote: Criminal procedure – Charge – Duplication of convictions – Accused charged with unlawful hunting of game and trespassing – Offences relate to same time and place – Though two separate acts were committed it constituted one criminal transaction.

Summary: The accused entered onto the complainant's farm in order to hunt an oryx and was charged with the offence of unlawful hunting of huntable game, and trespassing. The accused pleaded guilty to both counts and were accordingly convicted. The question arose whether there was a duplication of convictions when the court convicted on both counts. The correct approach would have been to apply the applicable tests from which the court would have concluded that, although the accused committed two separate acts, they had done so with a single intent and, in order to carry out their intention to hunt, they had to enter the farm. Both acts were thus necessary to carry out that single intent. The conviction and sentence on count 2 set aside.

ORDER

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1. Count 1: Each accused – The conviction and sentence is confirmed.
2. Count 2: Each accused – The conviction and sentence is set aside.

JUDGMENT

LIEBENBERG J: (Concurring SHIVUTE J)

[1] In this matter the accused persons were charged in count 1 with the offence of hunting huntable game in contravention of s 30(1)*(b)* of Ordinance 4 of 1975, and in count 2 of trespassing in contravention of s 1(1) of the Trespass Ordinance 3 of 1962. After pleading guilty on both counts, the accused were convicted and sentenced.

[2] What is evident from the charges preferred against the accused is that both offences relate to the same time and place, and the accused being charged with trespassing for having been on farm Beaulah in the Outjo district during the hunt. On review I enquired from the presiding magistrate whether the convictions on count 2 did not constitute a duplication of convictions. The learned magistrate in response now concedes that the accused persons clearly acted with a single intent namely, to hunt an oryx (illegally) on farm Beaulah and, in order to carry out that intention, they necessarily had to enter the said farm. Also, that a conviction on count 2 resulted in a duplication of convictions.

[3] Though s 83 of the Criminal Procedure Act, 51 of 1977, provides that the accused may be charged in the main, or the alternative, with the commission of several offences of which there exists uncertainty as to the facts that can be proved, or where there is doubt as to which of several offences is constituted by the facts and can be proved, it ultimately lies with the trial court in the end to decide on the facts whether conviction on those offences charged, constitutes a duplication of convictions.

[4] The Supreme Court in *S v Gaseb and Others*[1] approved two tests to be applied in determining whether or not there is a duplication of convictions and cited with approval these tests as summarised in the Full Bench decision of *S v Seibeb and Another; S v Eixab*[2] which at 256E-I reads:

[1] 2000 NR 139 (SC).
[2] 1997 NR 254 (HC).

'The two most commonly used tests are the single evidence test and the same evidence test. Where a person commits two acts of which each, standing alone, would be criminal, but does so with a single intent, and both acts are necessary to carry out that intent, then he ought only to be indicted for, or convicted of, one offence because the two acts constitute one criminal transaction. See *R v Sabuyi* 1905 TS 170 at 171. This is the single intent test. If the evidence requisite to prove one criminal act necessarily involves proof of another criminal act, both acts are to be considered as one transaction for the purpose of a criminal transaction. But if the evidence necessary to prove one criminal act is complete without the other criminal act being brought into the matter, the two acts are separate criminal offences. See Lansdown and Campbell South African Criminal Law and Procedure vol V at 229, 230 and the cases cited. This is the same evidence test.

Both tests or one or other of them may be applied and in determining which, or whether both, should be used the Court must apply common sense and its sense of fair play. See Lansdown and Campbell (supra)) at 228.' (Emphasis provided)

[5] The accused in the present instance on count 1 admitted that they went to farm Beaulah in order to hunt an oryx, and further pleaded guilty to the charge of trespassing preferred in count 2. It is clear that the accused persons committed two separate acts (unlawful hunting and trespassing) which each, standing alone, was criminal and in contravention of the provisions of two separate ordinances, but with the single intent to hunt. In order to carry out their intention, they had to enter farm Beaulah which essentially constituted one criminal transaction ie to hunt. In these circumstances the accused should not also have been convicted of trespassing as this resulted in a duplication of convictions. The conviction on count 2 therefore falls to be set aside.

[6] In the result, it is ordered:

1. Count 1: Each accused – The conviction and sentence is confirmed.
2. Count 2: Each accused – The conviction and sentence is set aside.

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J C LIEBENBERG

JUDGE

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N N SHIVUTE

JUDGE