

**REPUBLIC OF NAMIBIA**

NOT REPORTABLE



**HIGH COURT OF NAMIBIA, MAIN DIVISION**

**JUDGMENT**

**CR No: 22/2017**

In the matter between

**THE STATE**

and

**REINO NAMBASE**

**HIGH COURT MD REVIEW CASE NO 466/2017**

*Neutral citation: S v Nambase (CR 22/2017) [2017] NAHCMD 86 (16 March 2017)*

**CORAM: LIEBENBERG J et SHIVUTE J**

**DELIVERED: 16 March 2017**

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**ORDER**

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1. The conviction and sentence are set aside.
2. The matter is remitted to the trial court in terms of s 312(1) of Act 51 of 1977 with the direction to enter a plea of not guilty and bring proceedings to its natural conclusion.
3. In the event of a conviction, the court in sentencing must have regard to any part of the sentence the accused already served.

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**JUDGMENT**

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LIEBENBERG J: (Concurring SHIVUTE J)

[1] The accused was charged and convicted on a plea of guilty of theft of one Sansui television valued at N\$3 000. The presiding magistrate subsequently was in doubt as to whether the conviction is in order and forwarded the proceedings under cover of a letter in which he explains that the accused, when questioned pursuant to the provisions of s 112(1)(b) of the Criminal Procedure Act, 51 of 1977, did not admit to the particulars of the offence charged and that a plea of not guilty should have been noted.

[2] The particulars of the charge on which the accused pleaded guilty are that he on 13 July 2016 in the district of Luderitz, wrongfully and unlawfully stole one Sansui

television valued at N\$3 000, the property of Olivia lita. When questioned by the magistrate in terms of s 112(1)(b) the accused said that he found a Samsung television 'in the mountains' and as he did not know to whom it belonged, he decided to take it for himself. During these proceedings the magistrate pointed out to the prosecutor that the admissions made by the accused are in conflict with allegations contained in the charge and enquired whether the plea should be altered to one of not guilty. To this the prosecutor responded in the negative where after the court continued with the questioning and was satisfied in the end that the accused admitted the allegations in the offence charged, and convicted accordingly. As stated, the magistrate thereafter was in doubt as to whether the conviction was proper.

[3] It is trite law that the purpose of questioning under s 112(1)(b) is to safeguard the unrepresented accused against the result of an unjustified plea of guilty. Though the accused in this instance did not as such raise a defence or excuse, his answers suggested that he did not steal from the lawful owner who is unknown to him in that he found the television abandoned in the mountains. Furthermore, the make of the television he so found differs from that alleged in the charge which, when considered together with the circumstances in which he had found the television, the court should have recorded a plea of not guilty and let the State prove its case against the accused.<sup>1</sup>

[4] In the result, it is ordered:

1. The conviction and sentence are set aside.
2. The matter is remitted to the trial court in terms of s 312(1) of Act 51 of 1977 with the direction to enter a plea of not guilty and bring proceedings to its natural conclusion.
3. In the event of a conviction, the court in sentencing must have regard to any part of the sentence the accused already served.

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<sup>1</sup> *S v Naidoo* 1989(2) SA 114 (A).

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**J C LIEBENBERG**

**JUDGE**

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**N N SHIVUTE**

**JUDGE**