



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case no: CR 33/2019

In the matter between:

**THE STATE**

v

**BRANDON VRIES**

**ACCUSED**

**(HIGH COURT MAIN DIVISION REVIEW REF NO. 512/2019)**

**Neutral citation:** *S v Vries* (CR 33/2019) [2019] NAHCMD 107 (17 April 2019)

**Coram:** USIKU J and UNENGU AJ

**Delivered:** 17 April 2019

**Flynote:** Criminal Procedure – Review – Incomplete record – Court to decide whether despite incomplete record all the evidence is before court for the court to make a decision on review – Whether an accused is prejudiced by the incomplete record of proceedings.

Held: That the Court could not make out sense from the incomplete record of proceedings – The accused person was prejudiced in a way – Convictions and sentence set aside.

**Summary:** The accused persons was charged with the offence of contravening section 108 of Act 32 of 1944 – which is Contempt of Court. He was thereafter sentenced to three months imprisonment on the 12 November 2018.

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### ORDER

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The conviction and sentence are set aside.

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### REVIEW JUDGMENT

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#### **USIKU J, (UNENGU AJ concurring)**

[1] The matter was submitted before me for review from the Magistrate Court Rundu.

[2] Accused person was charged with a count of Contempt of Court in contravention of section 108 of Act 32 of 1944. He was convicted and sentenced to three months imprisonment.

[3] When the matter was submitted before me for review, I addressed the following query to the learned magistrate:

‘The record of proceedings is incomplete. Please sent it back to the magistrate concerned.’

The learned magistrate responded as follows:

'(2) My Lady, I regret to inform you that after searching for the record of proceedings on the desktop computer in the Court room where I had typed the proceedings, I was unable to find and retrieve the proceedings. Usually I type the proceedings on Microsoft word program on the desktop computer in Court and then cut and paste the proceedings on the NAMCIS record using the same desktop. It however appears that, there was an oversight on my part in cutting the typed *postea* proceedings from the Microsoft word program and pasting them on the NAMCIS record, because the contempt of court occurred after I had pronounced myself on the bail reduction application by the accused (Mr. Brandon Vries) whereby I reduced his bail to N\$800 as it can be seen on the NAMCIS record. Thereafter the accused, being unhappy with the court's decision to reduce bail to N\$800 became unruly and insulted the court, and as a result of that was held in contempt of court. That's from the little that I can still recall.

(3) However, in view of the fact that I was unable to find and retrieve the type record of proceedings from the desktop computer, therefore in the absence of the record of proceedings pertaining to the *postea* contempt of court, the conviction and sentence cannot stand. It is therefore my humble prayer My Lady is that the conviction and sentence be set aside.

As it pleases My Lady'

[4] The issue to be determined by this Court is whether despite the incomplete record all the evidence is before the Court for the court to make a decision on review and whether the accused person was prejudiced because of the incomplete record of the proceedings.

[5] Form the record of the proceedings there is completely nothing to show what transpired during the trial of the accused person. That makes the record incomprehensible and inadequate for a proper consideration of the review as all the necessary evidence for the Court to make a decision is not before the Court. The record of the Court proceedings are such that the Court could not make out sense of what transpired. The accused person was therefore prejudiced under the circumstances.

[6] The learned magistrate in paragraph three of his response to the query conceded that in the absence of the record of proceedings pertaining to the *postea*

contempt of Court, the conviction and sentence cannot stand and requested the conviction and sentenced to be set aside. There is completely nothing to show what transpired before court prior to the conviction and the resultant sentence. His concessions are correctly made and as a result, the convictions and sentence cannot be allowed to stand under the circumstances.

[7] In the result, the following order is made:

The conviction and sentence are set aside.

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D N USIKU  
Judge

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E P Unengu  
Acting Judge