

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case Title: <i>The State v Bonafatus Jossop</i>	Case No: CR 3/2020
	Division of Court: Main Division
Heard before: Honourable Mr. Justice Unengu AJ et Honourable Ms. Justice Usiku J	Delivered on: 23 January 2020
(HIGH COURT MAIN DIVISION REVIEW REF NO. 1005/2019)	
Neutral citation: <i>S v Jossop</i> (CR 3/2020) [2020] NAHCMD 14 (23 January 2020)	
The order: 1. The conviction and sentence on count 1 are confirmed. 2. The conviction and sentence on count 2 are set aside.	
Reasons for order:	
UNENGU, AJ (USIKU, J concurring): [1] This is a review matter sent on automatic review by the magistrate sitting at the magistrate court for the district of Karasburg in terms of s 302 of the Criminal Procedure Act Act ¹ (the CPA). [2] The accused in the matter was charged with housebreaking with intent to steal and theft as count 1. He pleaded guilty, was questioned in terms of s 112(1)(b) of the CPA, convicted and sentenced to twenty four (24) months imprisonment. In addition to the charge of housebreaking with intent to steal and theft in count 1, the accused was also charged with an offence of contravening s 6 of Act 29 of 2004 (POCA) i.e acquisition, use, possession of proceeds of unlawful activities. The proceeds referred to in count 2 is the N\$10 000 the value of the property of goods removed by the accused from the house broken into as per count 1. He was again convicted and sentenced to pay a fine of two	

¹ Act 51 of 1977.

thousand Namibia dollars (N\$ 2000) or four (4) months imprisonment.

[3] The magistrate having convicted and sentenced the accused as such, the question arose as to whether the conviction on count 2 did not amount to a duplication of convictions. In the matter of the *State versus Henock and 8 Other cases*², the full bench of this court, after referring to various authorities and case law in this jurisdiction and foreign jurisdictions such as South Africa, held in para 80 of the judgment that section 6 is aimed at the recipient of the proceeds of unlawful activities, as opposed to the author of the predicate offence. The accused is the author of the predicate offence in this matter. He is not a recipient of the proceeds of unlawful activities, therefore, he could not be charged under s 6 of the Act but could have been charged under s 4(b)(i) for money-laundering.

[4] In this review matter, because the state charged the accused under the wrong section to which he had pleaded, convicted and was punished for acquisition, use or possession of proceeds derived from the crime of housebreaking with intent to steal and theft, the conviction on count 2 amounted to an impermissible duplication of convictions. That being the case, it follows therefore, that the conviction and sentence on count 2 cannot be sustained.

E P UNENGU ACTING JUDGE	D N USIKU JUDGE

² (CR86/2019)[2019]NAHCMD 466(11 November 2019).

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