

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

<b>Case Title:</b> <i>The State v Johannes Peer</i>	<b>Case No:</b> CR 4/2020
	<b>Division of Court:</b> Main Division
<b>Heard before:</b> Honourable Mr. Justice Unengu AJ et Honourable Ms. Justice Usiku J	<b>Delivered on:</b> 23 January 2020
(HIGH COURT MAIN DIVISION REVIEW REF NO. 1500/2019)	
<b>Neutral citation:</b> <i>S v Peer</i> (CR 4/2020) [2020] NAHCMD 15 (23 January 2020)	
<b>The order:</b> 1. The conviction and sentence on count 1 are confirmed. 2. The conviction and sentence on count 2 are set aside.	
<b>Reasons for order:</b>	
UNENGU, AJ (USIKU, J concurring):  [1] The accused in the matter was charged with theft and money laundering, acquisition, possession or use of proceeds of unlawful activities as counts 1 and 2 respectively. He pleaded guilty to both counts, questioned in terms of s 112(1)(b) of the Criminal Procedure Act <sup>1</sup> , (the CPA), was convicted and sentenced on count 1 with a fine of N\$ 1500 in default payment 6 months imprisonment and on count 2 a fine of N\$ 1000 in default of payment 3 months imprisonment.  [2] The accused failed to pay the fines imposed, therefore, the magistrate sent the matter on automatic review in terms of s 302 of the CPA. I am satisfied that the proceedings in respect count 1 appear to be in accordance with justice. However, the same cannot be said about the proceedings in respect of count 2. The annexure describing the offence the accused allegedly had committed was badly drafted. Apart from the fact that it	

<sup>1</sup> Act 51 of 1977.

is too wide and vague, the annexure also has typing errors. See for example the year when the Act was promulgated is typed 204 instead of 2004. In addition, the annexure lump together offences under different sections of POCA. It does not specify what conduct the accused perpetrated to be charged in terms of the Act. It is trite law that the charge sheet must state clearly the particulars of the offence to enable the accused to know what offence he/she has committed. Simply put, the charge sheet must inform the accused what case he/she has to meet. Regrettably, this was not done by the state in count 2. In my view, count 2 is too wide and vague leaving the accused to guess as to whether he was charged with money – laundering or with acquisition, use or possession of proceeds of unlawful activities.

[3] In that regard as indicated hereinbefore, the conviction and sentence on count 1 is in order therefore, will be confirmed. The conviction and sentence in count 2 on the other hand though, founded on a defective charge which did not disclose the offence committed by the accused, will not be allowed to stand.

E P UNENGU ACTING JUDGE	D N USIKU JUDGE

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