REPUBLIC OF NAMIBIA **NOT REPORTABLE**

HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case Title: The State v Jakob April	High Court Case No: 1856/2022 CR 140/2022 **Division of Court:** High Court
Heard before: Hon. Mr Justice Liebenberg et Hon. Lady Justice Shivute	**Delivered on:** 8 December 2022
Neutral citation: S v April (Cr 140/2022) [2022] NAHCM 670 (8 December 2022)	
The order: (a) The conviction and sentence are set aside. (b) In the event the accused had paid a fine of N$900 in default of three months' imprisonment, it must be refunded to him.	
Reasons for order:	
SHIVUTE J (Concurring LIEBENBERG J) [1] The accused in this matter pleaded not guilty to a charge of assault read with the provisions of the Combating of Domestic Violence Act 4 of 2003. However, he was convicted after he purportedly made admissions in terms of s 220 of the Criminal Procedure Act 51 of 1977, (the CPA). He was sentenced to N$900 fine or in default three months' imprisonment. [2] The accused was convicted on 21 July 2022. However, the matter was only	

forwarded for review on 26 October 2022 after the accused had already served his sentence.

[3] I raised the following query with the magistrate:

(a) Why was there a delay to send the case on time for review?

(b) The accused was convicted of assault on the strength of the so called admissions in terms of s 220 of the Criminal Procedure Act, why did the court not explain the implications of s 220 to the accused before he made the so called admissions?

(c) How did the court satisfy itself that the accused made admissions in terms of s 220 if some of those admissions originated from the court itself?

[4] The magistrate responded that, the record was brought to him within seven days as required for proofreading. He further stated that he is not responsible for sending records for review to the High Court. However, he took it up with the clerk of court.

[5] With regard to the explanation of the effect of s 220 to the accused, the magistrate conceded that it was an oversight on his part. He was of the opinion that he was assisting the accused to make formal admissions. However, the helping hand was over extended and the formal admissions did not come from the accused person. He urged the court to set aside the conviction and sentence.

[6] It is evident from the record that the accused was not informed by the court a quo of the effect of s 220 before he made the admissions.

[7] The proper approach to record formal admissions from an unrepresented accused is that, immediately when it became apparent that he wished to make formal admissions, the court a quo was supposed to explain to the accused that the effect of making a formal admission is to relieve the state of the burden of proving the admitted facts by evidence, and that the accused is not compelled to assist the prosecution in proving its case. *S v Mavundla* 1976 (4) SA 713 (N.P.D).

[8] In the present matter, the accused pleaded not guilty where after proceedings were

postponed. With the commencement of proceedings on the next date, the prosecutor informed the court that 'matter for formal admissions'. The accused made some admissions. The magistrate then proceeded to question the accused similar to the provisions of s 112 (1) (*b*) of the CPA. The court a quo was not supposed to question the accused and extract answers from him. During the process of taking formal admissions the court is only allowed to ask questions for the purpose of clarifications if the accused said something that is ambiguous.

[9] Since the accused was not warned when he gave the so called admissions and some of those admissions were extracted from him through questioning by the court a quo, he was not properly armed with the knowledge of the consequences of giving formal admissions. He did not make an informed decision to give such formal admissions nor can it be concluded that he volunteered to give some of those admissions therefore, the conviction cannot be allowed to stand.

[10] In connection with the delay, the learned magistrate stated that it is not his duty to send the records for review but that of the clerk of court. Although the clerk of court is responsible to forward the records for review, it is the duty of the presiding magistrate to see to it that records are forwarded by the clerk of court for review to the High Court within one week in terms of s 303 of the CPA.

[11] The provisions of s 303 of CPA in terms of which the record of proceedings to be reviewed has to be submitted to the High Court within a week are peremptory. The failure to submit this matter on time has resulted in the miscarriage of justice as this matter was forwarded for review after the accused had already served his sentence. The presiding officer as well as the clerk of court are obliged to observe the time limit and are instructed to do so in order to avoid further miscarriage of justice in future.

[12] In the result, the following order is made.

(a) The conviction and sentence are set aside.
(b) In the event the accused had paid a fine of N$900 in default of three months' imprisonment, it must be refunded to him.

N N SHIVUTE **JUDGE**	**J C LIEBENBERG** **JUDGE**