

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION WINDHOEK

REVIEW JUDGMENT

PRACTICE DIRECTION 61

<b>Case Title:</b> <i>The State v Anarc Diedericks</i>	<b>Case No:</b> CR 05 /2023
<b>High Court MD Review No:</b> 1839 /2022	<b>Division of Court:</b> Main Division
<b>Heard before:</b> Hon Judge Usiku et Hon Judge Claasen	<b>Delivered on:</b> 27 January 2023
<b>Neutral citation:</b> <i>S v Diedericks</i> (CR 05/2023) [2023] NAHCMD 15 (27 January 2023)	
<b>The order</b>  a) The conviction and sentence are set aside. b) The matter is remitted to the trial court to apply section 113 of the CPA, to hear evidence on the matter and to bring the proceedings to its natural conclusion. c) In the event of a conviction the court should take into consideration the portion of the sentence that the accused had served already.	
<b>Reasons for order:</b>	
CLAASEN J (concurring USIKU J)	

[1] The matter before me is an automatic review that hails from the Magistrates' Court of Keetmanshoop. The accused was convicted of assault with intent to do grievous bodily harm and sentenced to pay a fine of N\$2000 or 6 months' imprisonment.

[2] A query was directed to the magistrate asking whether the conviction is in order, given that during the questioning in terms of s 112(1)(b) of the Criminal Procedure Act, No 51 of 1977 as amended (the CPA) it appeared that the accused may have had possible defences.

[3] I proceed to quote the relevant part of the court record:

'Court: What happened for you to assault him in this manner?

Accused: He strangled me I struggled to loosen his hands and after I came loose from his grip he beat me on my mouth and I was bleeding. I became agitated.

Court: At which point did you stab him?

Accused: It was after he beat me on my mouth that I beat him.'

[4] Further along during the questioning the accused also volunteered that he was under the influence of alcohol which was why he took out a knife and attacked the complainant.

[5] Section 113 of the CPA finds application to the situation at hand. The provision refers to proceedings under s 112 of the CPA and stipulates that if the court is in doubt whether the accused is in law guilty of the offence to which he pleaded or the court is satisfied that the accused does not admit an allegation in the charge or that the accused has a valid defence to the charge, the court shall record a plea of guilty and require the prosecutor to proceed with the prosecution. (My emphasis). This can be done at any stage of the proceedings under s 112 of the CPA up until before sentence is passed.

[6] It is clear from the answers by the accused that he was raising more than one defence. The magistrate has in his prompt reply conceded that there were indeed

indicators of possible defences. In light of that, the conviction and sentence cannot be endorsed and they are hereby set aside.

[7] In the result it is ordered that:

- a) The conviction and sentence are set aside.
- b) The matter is remitted to the trial court to apply section 113 of the CPA, to hear evidence on the matter and to bring the proceedings to its natural conclusion.
- c) In the event of a conviction the court should take into consideration the portion of the sentence that the accused had served already.

<b>C M CLAASEN</b> <b>JUDGE</b>	<b>D N USIKU</b> <b>JUDGE</b>