

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA
REVIEW JUDGMENT

Case Title: The State v Randy Bock	Case No: CR 48/2023 Division of Court: High Court, Main Division
Accused	Heard before: January J et D Usiku J
	Date of hearing: 20 April 2023
	Delivered on: 20 April 2023
Neutral citation: <i>S v Bock</i> (CR 48/2023) [2023] NAHCMD 212 (20 April 2023)	
ORDER	
1. The conviction and sentence is set aside. 2. The accused must be released from custody forthwith.	
REASONS FOR ORDERS:	
D Usiku J (January J concurring): [1] The matter before me is an automatic review from the magistrate's court in terms of s 302 of the Criminal Procedure Act 51 of 1977, as amended.	

[2] The accused appeared before the Mariental Magistrate's Court, charged with assault with intent to do grievous bodily harm. Accused was convicted and sentenced to three (3) years' imprisonment.

[3] Although no query was directed to the magistrate in this regard, the conviction and sentence is clearly not in accordance with justice and the accused person would be prejudiced if the review of this matter is delayed.

[3] [4] On 6 March 2020, during accused's first appearance, the court explained his right to legal representation and accused informed the court that he would conduct his own defence. The matter was subsequently postponed on several occasions.

[5] On 08 March 2022, the matter was scheduled for plea and trial. Before the charge was put to the accused, he informed the court that he applied for legal representation that morning. Upon enquiring why it took him so long to apply for legal aid, he informed the court that the reason it took him so long to apply for legal aid is because he was alone with his grandmother.

[6] Despite the accused's indication to have applied for legal aid, the court did not afford him the opportunity to obtain legal representation. The court directed that the charge should be put to the accused. The accused was, asked to plead to the charge without legal representation.

[7] From the record of proceedings, it is evident that the accused wanted legal representation, however his right to legal representation was denied.

[8] Article 12(1)(e) of the Constitution of the Republic of Namibia states that, all persons should be afforded adequate time and facilities for the preparation of their defence before the commencement of and during their trial, and shall be entitled to be defended by a legal practitioner of their choice. The right to be legally represented is a fundamental right.¹

¹ *Kambatuku v State* (CA 48/2013) [2014] NAHCMD 41 (12 February 2014).

[9] The refusal to grant the accused an opportunity to obtain legal representation *in casu* caused a flagrant disregard of the accused's constitutional right to a fair trial. In *Nowaseb v State*², this court set aside both conviction and sentence for the reason that the regional court magistrate refused a postponement to enable the accused to secure legal representation. The court went on to refer to various factors, which a court must take into account whether to grant such a postponement or not, stressing that such a consideration should be within the context of the fundamental right to legal representation.

[10] Consequently, the proceedings in this case cannot be said to be in accordance with justice, because there was a failure of justice, which resulted in a gross irregularity.

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

1. The conviction and sentence is set aside.
2. The accused must be released from custody forthwith.

D USIKU JUDGE	H C JANUARY JUDGE

² *Nowaseb v State* (CA 93/95) [1996] NAHCMD (28 October 1996).