

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA

REVIEW JUDGMENT

PRACTICE DIRECTIVE 61

Case Title: The State v Jacobs Audrey Booyesen Accused	Case No: CR 65/2023 High Court Review No: 893/2023 Division of Court: High Court, Main Division
Heard before: D Usiku J et Christiaan AJ	Delivered on: 14 June 2023
Neutral citation: <i>S v Booyesen</i> (CR 65) [2023] NAHCMD 325 (14 June 2023)	
ORDER:	
1. The conviction and sentence are set aside. 2. The accused person who is being held in custody, must be released forthwith.	
REASONS FOR ORDERS:	
D Usiku J (Christiaan AJ concurring): [1] The matter before us is an automatic review from Karasburg Magistrate Court in terms of s 302 of the Criminal Procedure Act 51 of 1977 (the CPA), as	

amended.

[2] The accused appeared before the Karasburg Magistrate Court, charged with assault by threat, read with the provisions of the Domestic Violence Act 4 of 2003. Accused pleaded guilty to the charge and was convicted whereafter he was sentenced to twelve months imprisonment of which six months is suspended for a period of 5 years on condition that the accused is not convicted of assault by threat committed during the period of suspension.

[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.

[4] During accused's first appearance on 23 March 2023, 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 to 4 April 2023 for further investigation and for a possible plea.

[5] Upon resumption on 4 April 2023, the accused pleaded guilty to the charge. He was questioned in terms of s 112(1) (b) of the CPA whereafter the questioning, the court did not satisfy itself that accused admitted to all the elements of the allegations in the charge. The court entered a plea of not guilty and the matter was thereafter postponed for trial which resumed on 10 May 2023.

[6] From the record of proceedings, it is evident that the accused's right to disclosure was never explained to him. It is the magistrate's duty to inform an unrepresented accused about his/her right to disclosure.

[7] The failure to inform an unrepresented accused of his right to disclosure and to ensure that the docket is disclosed to him constitute a serious irregularity, infringing the accused's constitutional right to a fair trial.

[8] In *S v Kahevita*,¹ the court held the following:

¹ *State v Kahevita* (CR 11) [2011] NAHCMD 25 (14 February 2011).

'It is not only legal practitioners, representing accused persons in criminal cases, who have the right to disclosure of witness statements and other documents the State intends relying on during the trial, but also the unrepresented accused. They are equally entitled to disclosure of all witness statements and other documents relied on by the State at the trial; and where the accused is unsophisticated and unaware of such right, the court should explain it to the unrepresented accused, and when necessary, make an appropriate order, compelling the State to comply. In the present case it is clear that the accused, at the commencement of the trial, was not put in the position where he knew what case he had to face, so that he could properly prepare his defence or give proper and full instructions to his legal representative.'

[9] Consequently, the proceedings in this case cannot be said to have been in accordance with justice, as a failure of justice occurred, which resulted in gross irregularity.

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

1. The conviction and sentence are set aside.
2. The accused person who is being held in custody, must be released forthwith.

D USIKU JUDGE	P CHRISTIAAN ACTING JUDGE