

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK
REVIEW JUDGMENT
PRACTICE DIRECTIVE 61

Case Title: The State v Paul Eriatu	Case No: CR 113/2023
High Court MD Review No: 1563/2023	Division of Court: High Court, Main Division
Coram: Liebenberg J <i>et</i> Shivute J	Delivered: 3 November 2023
Neutral citation: <i>S v Eriatu</i> (CR 113/2023) [2023] NAHCMD 702 (3 November 2023)	
ORDER: The conviction and sentence are set aside and the matter is remitted to the court <i>a quo</i> to proceed to trial and bring proceedings to its natural conclusion.	
REASONS:	
LIEBENBERG J (SHIVUTE J concurring):	

[1] Before court is a review emanating from the Magistrate's Court for the district of Katima Mulilo, where the accused was arraigned on one count of a contravention of s 7 read with sections 18 and 10 of the Immigration Control Act 7 of 1993 – failing to present himself to an immigration officer at a port of entry.

[2] The accused pleaded guilty to the charge but his plea was not accepted after the accused did not admit all the elements of the offence. The matter was then postponed for fixing of a trial date to 27 October 2023, but seemed to have appeared on 22 August 2023 on account of the accused wishing to make formal admissions. The accused then proceeded to make certain admissions in terms of s 220 of the Criminal Procedure Act 51 of 1977 (the CPA) and was thereafter convicted. He was sentenced to N\$6000 or 6 months' imprisonment.

[3] When the matter came on automatic review, this court queried the authority of the court *a quo* to follow the procedure it did – to summarily convict the accused – after a plea of not guilty was entered instead of proceeding with trial proceedings.

[4] In response, the magistrate concedes that following the admissions in terms of s 220 of the CPA, the correct procedure was not followed and asks for the conviction and sentence to be set aside and remit the matter to proceed to trial.

[5] On the trial date, the accused intimated that he wished to make admissions which were entered into the record. Following these admissions, the court pronounced itself as follows: 'Accused's admissions made part of the record and thus admitted against him. Court is satisfied that accused admits all elements in the charge. The accused is found guilty as charged.' The accused's rights to mitigation before sentence were then read to him and he was sentenced.

[6] It was stated in *S v April*¹ that the proper approach to record formal admissions from an unrepresented accused is that, immediately when it becomes apparent that the accused wishes to make formal admissions, the court *a quo* must explain to the accused that the effect of making a formal admission is to relieve the state of the burden of proving

¹ *S v April* (CR 140/2022) [2022] NAHCMD 670 (8 December 2022). See *S v Mavundla* 1976 (4) SA 713 (N.P.D).

the admitted facts by evidence, and that the accused is not compelled to assist the prosecution in proving its case. This notwithstanding, what should have been done after the admissions were made, was for the state to either lead evidence or to close its case where after the accused be put on his defence, considering that he admitted sufficient allegations in the charge establishing a *prima facie* case against him.² The procedure as adopted in this instance, to just summarily convict the accused without regard to the proper procedure was irregular, vitiating the outcome of the proceedings.

[7] On account thereof, the conviction and sentence cannot be permitted to stand and must be set aside.

[8] In the result, it is ordered that:

The conviction and sentence are set aside and the matter is remitted to the court *a quo* to proceed to trial and bring proceedings to its natural conclusion.

J C LIEBENBERG	N N SHIVUTE
JUDGE	JUDGE

² *S v Kakulubelwa* (CR 97/2019) [2019] NAHCMD 521 (28 November 2019).