

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

PRACTICE DIRECTION 61

<b>Case Title:</b>  The State v Ruan Bock and Jasper Engelbrecht	<b>Case No:</b>  CR 143/2023
<b>High Court MD Review No:</b> 978/2023	<b>Division of Court:</b>  High Court, Main Division
<b>Coram:</b> Liebenberg J <i>et</i> Shivute J	<b>Delivered:</b>  5 December 2023
<b>Neutral citation:</b> <i>S v Bock</i> (CR 143/2023) [2023] NAHCMD 791 (5 December 2023)	
<b>ORDER:</b>  The conviction and sentence are set aside.	
<b>REASONS:</b>	
LIEBENBERG J (SHIVUTE J concurring):	

[1] This is a review from the Magistrate's court for the district court of Keetmanshoop. The accused persons were convicted on their guilty pleas in terms of s 112(1)(a) of the Criminal Procedure Act 51 of 1977 ('the CPA') for contravening s 2 read with ss 1, 11(1)(a), 15 and 17 of the Stock Theft Act 12 of 1990 (the Act) as amended – Possession of suspected stolen stock. Following their conviction, the accused persons were sentenced to One Thousand Namibia Dollars (N\$1000) or three (3) months' imprisonment.

[2] This court, on review, addressed a query to the court *a quo* to enquire as to what satisfied it that there was a reasonable suspicion that the meat was stolen when regard is had to the fact that the accused were convicted in terms of s 112(1)(a) of the CPA and no enquiry held in order to ascertain the conditions under which they possessed the stock, ie their inability to give a satisfactory account for possessing the meat.

[3] The magistrate concedes that he could not have been satisfied that there was a reasonable suspicion that the meat was stolen and that the accused persons failed to give a satisfactory explanation for such possession on account of the conviction under s 112(1)(a). The concession is proper. It must be stated that the magistrate invoked the provisions of s 112(1)(a) on account of the value of the stolen meat.

[4] Section 2 of the Act provides as follows:

'Any person who is found in possession of stock or produce in regard to which there is reasonable suspicion that it has been stolen and is unable to give a satisfactory account of such possession, shall be guilty of an offence.'

[5] It is evident from the section quoted above that for a conviction to follow, an accused found in possession of suspected stolen stock, shall be afforded the opportunity to give an explanation for such possession. It is only upon such failure, that a guilty verdict will be returned. In the present case however, on account of the accused not having been questioned about the circumstances under which they possessed the stolen meat, the court could not have been satisfied that the requisites of the provision were met. It goes without saying that the accused persons were convicted on their mere guilty pleas in terms of s 112(1)(a) of the CPA which does not place an obligation on the trial

court to question an accused in order to ascertain the circumstances under which the offence charged was committed.

[6] On account of there being no evidence before court, that there was a reasonable suspicion that the meat was stolen and that the accused persons failed to give a satisfactory account for possession of the suspected stolen meat, the conviction and sentence fall to be set aside.

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

The conviction and sentence are set aside.

<b>J C LIEBENBERG</b> <b>JUDGE</b>	<b>N N SHIVUTE</b> <b>JUDGE</b>