

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION, OSHAKATI

REVIEW JUDGMENT

“ANNEXURE 11”

Case Title: <i>The State v Setson Jelly Abraham & 2 others</i>	CR No.: 45/2020 Case No.: OPU-CRM-1014/2020
	Division of Court: Northern Local Division
Heard before: Honourable Mr. Justice January J <i>et</i> Honourable Ms. Justice Salionga J	Delivered on: 25 August 2020
Neutral citation: <i>S v Abraham</i> (CR 45/2020) [2020] NAHCNLD 114 (25 August 2020)	
The order: <ol style="list-style-type: none">1. The conviction and sentence of housebreaking with intent to steal and theft is set aside;2. The matter is remitted to the magistrate to enter a plea of not guilty in terms of section 113 of the Criminal Procedure Act, Act 51 of 1977 and proceed with the trial.	
Reasons for the order	
JANUARY J (SALIONGA J concurring): [1] The three accused pleaded guilty to a charge of housebreaking with intent to steal and	

theft. They were questioned in terms of section 112(1)(b) of the CPA. They admitted all the elements of the crime but for the element of unlawfulness.

[2] The record of proceedings reflect amongst others as follows in this regard:

'Q: Did you knew (sic) at the time that your conduct was wrongful and unlawful?

A: No.

Q: Do you also knew (sic) that you could be punished for that if arrested by the police?

A: No.'

[3] The magistrate could not have been satisfied that the accused intended to plead guilty in view of the denial of wrongfulness and unlawfulness. It seems that the magistrate convicted the accused persons on the acceptance of the plea by the public prosecutor who also ignored the denial of wrongfulness and unlawfulness.

In this regard the record reflects:

'Crt: Does the state accept the plea of guilty as tendered by the accused person?(sic)

PP: State accepts the plea as tendered by the accused and pray for conviction.

Crt: Satisfied that accused admitted all the allegations of the offence.'

Judge(s) signature	Comments:
January J	
Salionga J	