

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION, OSHAKATI

REVIEW JUDGMENT

“ANNEXURE 11”

Case Title: <i>The State v Jerusalem Bernard</i>	CR No.: 50/2020 Case No.: OH 401/2020
	Division of Court: Northern Local Division
Heard before: Honourable Ms. Justice Diergaardt AJ <i>et</i> Honourable Mr. Justice January J	Delivered on: 28 August 2020
Neutral citation: S v Bernard (CR 50/2020) [2020] NAHCNLD 119 (28 August 2020)	
The order: <ol style="list-style-type: none">1. The conviction on count 1 is confirmed and the acquittal on count 2 is set aside.2. The matter is remitted to the Magistrate to sentence the accused on count 2.	
Reasons for the order	
DIERGAARDT AJ (JANUARY J concurring): [1] This matter came before me on automatic review in terms of section 304 of Act 51 of 1977. The accused stood charged on having contravened s 2(a) of the Abuse of Dependence-Producing Substances and Rehabilitation Centers Act 41 of 1971- dealing in cannabis. Contravening section 6 (1) read with sections 1, 2 and 10(3) of the Immigration Control Act, Act 7 of 1993 - Entry into Namibia at any place other than a port of entry. He was questioned in terms of section 112 1 (b) of Act 51 of 1977 where after he was convicted on count 1 for dealing in cannabis and sentence to seven thousand Namibian dollars or in default nine months imprisonment and acquitted on count 2 without entering a plea of not guilty in	

terms of section 113 or any evidence being led.

[2] Upon my query as to why he did not enter a plea of not guilty and what procedure was used to acquit the accused after questioning him the magistrate conceded that he erred.

[3] It is evident that the incorrect procedure was followed and that the accused's plea should have been corrected in terms of section 113 of the CPA. Section 113 of the Criminal Procedure Act, Act 51 of 1977 (the CPA) provides as follows:

'If the court at any stage of the proceedings under section 112 and before sentence is passed is in doubt whether the accused is in law guilty of the offence to which he has pleaded guilty or is satisfied that the accused does not admit an allegation in the charge or that the accused has incorrectly admitted any such allegation or that the accused has a valid defense to the charge, the court shall record a plea of not guilty and require the prosecutor to proceed with the prosecution: Provided that any allegation, other than an allegation referred to above, admitted by the accused up to the stage at which the court records a plea of not guilty, shall stand as proof in any court of such allegation.' (my emphasis)

[4] To be presented before an Immigration official is not an element of the offence as contained in section 6(1) of the Immigration Control Act. I am satisfied that the accused admitted to all the elements in count 2. In the circumstances the acquittal in respect of count 2 cannot be allowed to stand.

[5] In the result it is ordered that:

1. The conviction on count 1 is confirmed and the acquittal on count 2 is set aside.
2. The matter is remitted to the Magistrate to sentence the accused on count 2.

Judge(s) signature	Comments:
January J	NONE
Diergaardt AJ	NONE