

REPUBLIC OF NAMIBIA



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

REVIEW JUDGMENT

Case Title: <i>The State v Fair-Team Tjavara</i>	CR No.: 04/2020 Case No.: OPU-CRM-503/2019
	Division of Court: Northern Local Division
Heard before: Honorable Mr Justice January J <i>et</i> Honorable Ms Justice Salionga J	Delivered on: 17 January 2020
Neutral citation: <i>S v Tjavara</i> (CR 04/2020) [2020] NAHCNLD 08 (17 January 2020)	
The order: <ol style="list-style-type: none">1. The conviction for housebreaking with intent to commit a crime unknown to the State is set aside and substituted: The accused is convicted for housebreaking with intent to steal;2. The sentence is confirmed.	
Reasons for the order:	
JANUARY J (SALIONGA J concurring):	

[1] Mr Acting Justice Namweya (as he then was) raised a query to the learned magistrate in this matter in the following terms; *'If evidence established what the intention of the accused was when he break-in (sic), would the court still convict the accused of Housebreaking with intent to commit a crime to the state unknown?'*

[2] The accused pleaded guilty and was convicted as charged. He was sentenced to 18 months imprisonment of which 8 months imprisonment is suspended for a period of 5 years on condition accused is not convicted of housebreaking with intent to steal and theft committed within the period of suspension.

[3] The accused was questioned by the learned magistrate pursuant to the provisions of section 112 (1) (b) of the Criminal Procedure Act, Act 51 of 1977. He admitted that he broke into the house with the intention to steal food in the house. He eventually appropriated nothing as he did not find food.

[4] The magistrate explained that the prosecution should have charged the accused with housebreaking with intent to steal but at the time the charge was put the prosecutor did not know what the intention of the accused was.

[5] Housebreaking with intent to steal is a competent verdict for housebreaking with intent to commit a crime unknown to the state in terms of s 262(2) of Act 51 of 1977. It made no sense to convict an accused of an offence to the prosecutor unknown when he has admitted the commission of an actual offence.¹

H C JANUARY JUDGE	J T SALIONGA JUDGE

¹ See: *S v Kharuxab* 2008 (1) NR 345 (HC)