

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI

REVIEW JUDGMENT

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| Case Title: The State v Michael Mark Tjaapo | CR: 11/2024 |
| | Division of Court: Northern Local Division |
| Heard before: Salionga J et Kessler J | Delivered on: 5 April 2024 |
| Neutral citation: <i>S v Tjaapo</i> (CR 11/2024) [2024] NAHCNLD 35 (5 April 2024) | |
| It is hereby ordered that: <ol style="list-style-type: none">1. The conviction and sentence in respect of count 1 are confirmed.2. The conviction and sentence in respect of count 2 are set aside. | |
| Reasons for the order: | |
| KESSLAU J (SALIONGA J concurring) [1] The matter from the Magistrate's court of Opuwo is before this court for review in terms of s 302 of the Criminal Procedure Act 51 of 1977, as amended (the CPA). [2] The accused was charged with count 1: Contravening section 83(2) of the Road | |

Traffic and Transport Act 22 of 1999 – Use of a motor vehicle without the owner’s consent and count 2: Malicious damage to property. He pleaded not guilty, however, after evidence was presented, was convicted and sentenced on both counts. The conviction and sentence in respect of count 1 appears to be in accordance with justice and will be confirmed.

[3] From the record it appears that both counts emanated from the same set of facts of the accused using the complainant’s vehicle without consent and whilst doing so damaged the said vehicle. In that respect the following query was sent to the Magistrate:

‘One of the elements of the crime of “malicious damage to property” is that the accused should have the malicious intent to injure/hurt the complainant by damaging his/her property. Based on which evidence was the learned Magistrate satisfied that that element was proven by the State?’

[4] The Magistrate in reply conceded that there was no intention of maliciousness proved by the questions posted to the accused and furthermore added that it appears to be a duplication of convictions.

[5] In the light of the above concession by the Magistrate the conviction and sentence on the charge of malicious damage to property will be set aside.

[6] In the result the following orders are made:

1. The conviction and sentence in respect of count 1 are confirmed.
2. The conviction and sentence in respect of count 2 are set aside.

| Judge(s) signature | Comments: |
|---------------------------|------------------|
| KESSLAU J: | None |
| SALIONGA J: | None |