

IN THE HIGH COURT OF NAMIBIA

In the matter between

THE STATE

versus

HENOCK WILLIAMS

[HIGH COURT REVIEW CASE NO.: 571/07]

CORAM: PARKER, J. et SILUNGWE, A.J.

Delivered on: 2007 June 4

REVIEW JUDGMENT:

PARKER, J:

[1] This matter is submitted to this Court for automatic review. The accused person was convicted of the statutory offence of trespassing, i.e. in terms of s. 1 of the Trespass Ordinance, 1962 (Ordinance 3 of 1962), and sentenced to 24 months' imprisonment, of which 12 months were suspended for three years on condition that he was not convicted of the offence of trespass under s. 1 of Ordinance 3 of 1962, committed during the period of suspension.

[2] In interpreting and applying the provisions of s. 1 of the South African Trespass Act, 1959 (Act 6 of 1959) which are identical to the Namibian provisions, Roberts, AJ, held in *R v Venter*,¹ that a charge of trespass under the Act cannot succeed unless there is *mens rea*. Thus, the form of culpability required for the crime is intention. *Venter* was approved by Jenet, JP in *S v Ziki* where the learned Judge stated, “That *mens rea* must be present for the offence of trespass is clear (see *R v Venter* 1961 (1) SA 363 (T)), though the accused must show that it is absent (see *S v Nkopane*, 1992 (4) SA 279 (O)).”²

[3] What is the position in this case? In his evidence, the accused person admitted that he was found inside the grounds of the Onakathilo Club and that he did not have the permission of the owner or lawful occupier of the Club to be there. He testified further that he told the boy who found him in the Club that he was hiding from his uncle who wanted to take him to the cattle-post, and the Club was the nearest isolated place where he could hide.

[4] Having considered the totality of the evidence, I think his story could reasonably possibly be true, and, therefore, in my view, the accused has shown that *mens rea* is absent. Thus, in my opinion, the learned magistrate should have concluded that the necessary *mens rea* was not present.

[5] In the result, the conviction and sentence are set aside.

PARKER, J

¹ 1961 (1) SA 363 (T).

² 1965 (4) SA 14 (E) at 15G-H.

I agree.

SILUNGWE, A.J.