



**CASE NO.: CR 09/09**

**IN THE HIGH COURT OF NAMIBIA HELD**

**IN OSHAKATI**

In the matter between:

**THE STATE**

and

**MATHEUS FILLEMON**

*(HIGH COURT REVIEW CASE NO.: 20/2009)*

**CORAM:               LIEBENBERG, AJ *et* SHIVUTE, AJ**

Delivered on: 31 March 2009

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**REVIEW JUDGMENT**

**SHIVUTE, AJ.:** [1] The accused in this matter was charged with the offence of theft in Ondangwa magistrate's court. He pleaded guilty to the charge and was convicted as charged and sentenced.

[2] A query was directed to the magistrate as follows:

“1. Why was the date when the incident took place, the name of the Shebeen and the district where the incident took place not covered by the Magistrate when he questioned the accused in terms of section 112 (b) Act 51 of 1977?

2. Within which time frame was the accused informed to appeal given the fact that such time frame is not indicated on the annexure attached which was used to inform the accused of his rights of appeal?”

3. The learned magistrate replied to the query as follows:

*“I concede I over looked to canvas the date, the name of the Shebeen and the district the incident took place when I questioned the accused in terms of section 112 (b) of Act 51 of 1977. I have also noted that the annexure on appeal rights does not specify the time frame within which an accused is to appeal. This omission is due to an oversight. It should reflect that the accused has 14 days to note such an appeal. I undertake in this regard to take the necessary corrective measures and amend the annexure accordingly.*

*I stand guided by the learned Judge as to the corrective measures to be adopted in this case”.*

[4] 1. The questioning was clearly inadequate. Important questions such as the date, month, year when the offence took place; and

2. The place and the district where the offence took place were not canvassed at all.

[5] Section 112 (1) (b) of the Criminal Procedure Act, Act 51 of 1977 states that the magistrate shall question the accused with reference to the alleged facts of the case in order to ascertain whether he admits the allegations in the charge to which he has pleaded guilty, and may, if satisfied that the accused is guilty of the offence to which he has pleaded guilty, on his plea of guilty of that offence impose a competent sentence.

[6] The learned magistrate concedes that he overlooked to canvass the date, the name of the shebeen and the district where the incident took place. The oversight on the part of the magistrate amounts to an irregularity and which irregularity justifies the setting aside of the conviction.

[7] This is not all though. In informing the accused his rights of appeal, the learned magistrate used an annexure which does not disclose the time frame within which the accused has to note an appeal, should he wishes to do so.

[8] Before the court uses an annexure it should satisfy itself that such annexure meets the requirements i.e. it should contain all the relevant information needed to be used for that particular purpose.

[9] In the result, the conviction and sentence are set aside and the matter is remitted to the magistrate in terms of section 312 to proceed in terms of section 112 (1) (b) of Act 51 of 1977.

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**SHIVUTE, AJ**

**I agree**

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**LIEBENBERG, AJ**