



CASE NO.: CR 21/2009

**IN THE HIGH COURT OF NAMIBIA HELD
IN OSHAKATI**

In the matter between:

THE STATE

and

ERASTUS ELIFAS SHILUMBU

(HIGH COURT CASE NO.:77/2009)

CORAM: SHIVUTE, A.J et LIEBENBERG, A.J

Delivered on: 01 June 2009

REVIEW JUDGMENT:

SHIVUTE, A.J.: [1] The accused appeared in Ondangwa Magistrate's Court charged with two counts of Assault with intent to do grievous bodily harm.

[2] When the case was sent for review, page 10 of the typed record reflects that the accused was convicted of assault with intent to do grievous bodily harm in respect of the first count, and of common assault in respect of the second count. However the J4 Review covering sheet reveals that the accused was convicted of Assault with intent to do grievous bodily harm in respect of both counts.

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

“At page 10 of your record the verdict on the second count is indicated as guilty of common assault. However your J4, Review covering sheet reveals that the accused was convicted of the offence of assault with intent to do grievous bodily harm. Which offence was the accused convicted of on the second count?”

[4] The learned magistrate responded as follows:

“Honourable Justice, I apologise sincerely for my mistake the J4 should clearly have reflected that the accused was convicted of Assault common in respect of count 2. Thus, for the second count; accused was convicted of assault (common), as reflected on p14 of the original record. Kindly endorse that the Court did not find the accused guilty of Assault with intent to do grievous bodily harm, as reflected on the J4- Review covering sheet, but of assault (common)”.

[5] The importance of proof reading the record before it is forwarded for review is to avoid these types of mistakes. Therefore the trial magistrate is advised to make sure that the record is proof read before it is send.

[6] In Conclusion the following order is made:

- a) The conviction on the first count is confirmed.
- b) The conviction on the second count is amended to read: Guilty of Assault.
- c) The sentence on both counts is confirmed.

_____ (Signed)
SHIVUTE, A.J

I concur

_____ (Signed)
LIEBENBERG, A.J