

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA

JUDGMENT

CASE NO.: CA 52/2012

IN THE HIGH COURT OF NAMIBIA

MAIN DIVISION

In the matter between:

THE STATE

APPELLANT

and

LOUIS JOHAN ANTONIUS WILLEMSE

RESPONDENT

Neutral citation: S v Willemse (CA 52/2013) [2013] NAHCMD 321 (7 OCTOBER 2013)

CORAM: SMUTS, J et MILLER, AJ

Heard on: 7 October 2013

Delivered on: 7 October 2013

Flynote: Appeal by State against discharge of respondent at the close of the State's case. The magistrate misdirected himself and failed to apply the test restated by the Supreme Court in *State v Teek* 2009 (1) NR 127 (SC). Discharge set aside and matter remitted to the magistrate's court for the trial to be in de novo as the presiding magistrate had since left the magistracy.

EX TEMPORE JUDGMENT

JUDGMENT

SMUTS J: [1] This is an appeal against the discharge of the respondent at the close of the State's case in the trial against him in the Khorixas Magistrate's Court where he had faced two charges, namely of hunting hunt-able game and unlawful transportation of game meat without a permit. At the close of the State's case, the presiding magistrate discharged the respondent in terms of s174 of the Criminal Procedure Act, 51 of 1977. The State subsequently applied for and was granted leave to appeal by this Court.

[2] When the matter was called this morning, Mr. Hinda, SC who appeared for the respondent, correctly conceded that there was no basis for the magistrate to have discharged the respondent at the close of the State's case in terms of s174 of the Criminal Procedure Act. Mr. Moyo, who appeared for the State, agreed with that approach.

[3] Applying the test crisply set out by the Supreme Court in *State v Teek*¹ and particularly in paragraph 7, it is clear that this concession is well founded. It is clear from the evidence of the State witnesses that the respondent was caught driving a motor vehicle carrying two dead animals, namely an oryx and springbok without a hunting license. Furthermore, there was the evidence that, when he was approached by the police, he attempted to escape or to get away.

[4] The magistrate also appeared to have taken matter into account which was not before the magistrate when reaching the conclusion that the respondent should be discharged. The conclusion reached by the magistrate is unsustainable upon an application of the test recently restated in *State v Teek*

¹ 2009 (1) NR 127 (SC).

as well as upon the facts of this case. The respondent should not have been discharged at the close of the State's case.

[5] I therefore have no hesitation in upholding this appeal and in so doing directing that the discharge by the magistrate at the close of the State's case is hereby set aside and that the matter is to proceed to trial so that the respondent be placed upon his defence. The matter would then ordinarily need to proceed to trial before the presiding magistrate. But it was pointed out by Mr. Moyo that the presiding magistrate has since left the magistracy. In that event, the trial would then need to commence *de novo* before another magistrate.

[6] The appeal is thus upheld and the discharge is set aside. The matter is remitted for trial and is to proceed *de novo* before another magistrate.

DF Smuts
Judge

I agree

J Miller
Judge