



Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO

**IN THE HIGH COURT OF SOUTH AFRICA  
NORTH WEST DIVISION – MAHIKENG**

**HIGH COURT REF NO: 01/2024**

**DATE: 14 FEBRUARY 2024**

**In the matter between:**

**THE STATE**

**And**

**THABO JOHN NGULASHI**

**ORDER**

1. The proceedings in count 1 were not in accordance with justice and are hereby reviewed and set aside.
2. The proceedings in count 2 are confirmed.
3. The matter in relation to count 1 is referred back to the court *a quo* to start *de novo* before the same Magistrate.

**REVIEW JUDGEMENT**

**DJAJE DJP**

[1] This matter was sent on special review by the Magistrate with the following request:

*“Submission of records for special review in terms of the provisions of section 302 Criminal Procedure Act 1977*

1. *I have accepted accused plea erroneously without accused having admitted all the elements of the offence in respect of count one. Accused was arraigned on a charge of theft. He did not admit that he had the intention to steal electric cables. He in fact pleaded that he considered the electric cables which he found at an abandoned premises to be scrap.*
2. *I neglected to sentence the accused in respect of count two which is a statutory offence.*

*I therefore humbly request that the Honourable Reviewing Judge set aside the conviction in respect of count 1 and remit the case to me to impose an appropriate sentence in respect of count two or alternatively make an appropriate order.”*

[2] The accused herein was legally represented and after pleading guilty a statement in terms of Section 112 (2) of the Criminal Procedure Act 51 of 1977 was read on his behalf. The following appears from the record as the Section 112 (2) statement:

*“I the undersigned **THABO JOHN NGULASHE** do hereby state and declare as follows:*

*I appreciate the nature and consequences of making this statement whereof I attach my signature herein freely and voluntarily whilst in my full and sober senses without and undue influence. I further understand that I have the right to remain silent.*

**COUNT 1**

*I therefore admit that I am guilty of the crime of **THEFT**.*

*IN THAT, I, the accused did upon or about 22/03/2023 and at or near Klerksdorp in the District of Matlosana unlawfully and intentionally stole electric cables 25 cm long valued at R2425.00 the property or in the lawful possession of Petrus Hendrick Johannes Malais.*

**COUNT 2**

*I further admit that I am guilty of the crime of **TRESPASSING***

*IN THAT upon or about 13/04/2023 and at or near Klerksdorp in the District of Matlosana. I, the accused did unlawfully and without permission Petrus Hendrick Johannes Malais the lawful occupier of any land or building or part of the said building to wit: Dynamic Wonders.*

*In contravention of the provisions of Section 1(1) or (b) read with Section 1 (1A), 1(2) and 2 of the Trespass Act 6 of 1959 and further Section 250(1)(d) of the Criminal Procedure Act 51 of 1977.*

*On the day in question I was on my way from town I passed the complainant's firm that looked abandoned. I got in and picked up what seemed to be scrap at the time. The complainant arrived with one other person and took me to another location from which they called the police and I was arrested for theft and trespassing.*

*I admit that while acting in the manner described above, I knew that my actions were unlawful and that they are punishable by a court of law.*

*I had no right or permission to act as I did and hereby plead guilty.”*

- [3] In respect of count 1 of theft the accused explained that what he picked up was what seemed to be scrap. This clearly indicates that the accused did not admit to have the intention to steal electric cable. It should have been established by the court whether the accused was aware of the nature of the goods that he unlawfully picked up in the premises of the complainant. The Magistrate correctly conceded that the accused did not admit all the elements

of the offence in count 1. The conviction stands to be set aside on those basis.

- [4] As far as the sentence in count 2 is concerned, the record on page 25 at line 7 indicates that there was a sentence imposed in respect of count 2. However, the sentence imposed in count 2 is not recorded on the front page of the J15. The Magistrate should have referred to an annexure or have one attached indicating that sentence in respect of count 2 was imposed on the record. I see no need for the matter to be remitted back to the Magistrate for a sentence in count 2 to be imposed. It should be emphasized that the Magistrate must in future ensure that sentence imposed is reflected on the J15 as well.

## **Order**

- [5] Consequently, the following order is made:

1. The proceedings in count 1 were not in accordance with justice and are hereby reviewed and set aside.
2. The proceedings in count 2 are confirmed.
3. The matter in relation to count 1 is referred back to the court *a quo* to start *de novo* before the same Magistrate.

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**J T DJAJE**

**DEPUTY JUDGE PRESIDENT**

**NORTH WEST DIVISION; MAHIKENG**

**I agree**

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**FMM REID**

**JUDGE OF THE HIGH COURT**

**NORTH WEST DIVISION, MAHIKENG**