



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK**

**JUDGMENT**

Case no: CR: 31/2013

In the matter between:

**THE STATE**

and

**ALBERTO-B GROENEWALD**

**ACCUSED**

(HIGH COURT MAIN DIVISION REVIEW REF NO. 519/2013)

**Neutral citation:** *State v Groenewald* (CR 31/2013) [2013] NAHCMD 119 (03 May 2013)

**Coram:** HOFF J and UNENGU AJ

**Delivered:** 03 May 2013

**Summary:** Questioning by magistrate in terms of section 112(1)(b) of Act 51 of 1977 incomplete – Magistrate did not question the accused in respect of the element of intention – Conviction and sentence set aside and matter referred back to magistrate to question accused on the issue of intention.

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## ORDER

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- (a) The conviction and sentence are set aside.
- (b) The matter is referred back to the magistrate in order to question the accused in respect of the element of intention.

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## JUDGMENT

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HOFF J (UNENGU AJ concurring):

[1] The accused was convicted of the crime of housebreaking with intent to steal and theft and sentenced to 9 months imprisonment of which 5 months imprisonment were suspended on certain conditions.

[2] The accused pleaded guilty and was questioned in terms of the provisions of section 112(1)(b) of Act 51 of 1977.

[3] I directed the following query to the magistrate:

‘Did the questioning in terms of section 112(1)(b) establish why the goods had been removed ?’

[4] The magistrate in his reply conceded that the questioning did not cover the element of intention.

[5] In the result the following orders are made:

- (a) The conviction and sentence are set aside.

- (b) The matter is referred back to the magistrate in order to question the accused in respect of the element of intention.

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E P B HOFF  
Judge

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E P UNENGU  
Acting Judge