

THE HIGH COURT OF NAMIBIA in the matter between: **THE STATE versus ONIAS MARUME, (HIGH COURT REVIEW CASE NO.:753/06) CORAM: HOFF, J et VAN NIEKERK, J**, Delivered on: 2006-12-19.

REVIEW JUDGMENT: VAN NIEKERK, J: [1] The accused was convicted in the magistrate's court, Gobabis on two counts under the Copyright and Neighbouring Rights Protection Act, 1994 (Act 6 of 1994) ("the Copyright Act"). The charges were as follows:

Count 1

"THAT THE ACCUSED IS/ARE GUILTY OF SELLING, LETTING OR EXPOSING FOR SALE OR HIRE AN ARTICLE THAT CONSTITUTES AN INFRINGEMENT OF A COPYRIGHT.

That the accused is guilty of **CONTRAVENING SECTION 29(2) (b)** read with **SECTIONS 1, 29(1), 29(3), 29(4) & 33 of the COPYRIGHT AND NEIGHBOURING RIGHTS PROTECTION ACT, ACT NO 6 OF 1994.**

In that upon or about 6th day of April 2006 and at or near Spandiens Motors in the district of Gobabis the accused did wrongfully and intentionally sell, let or by way of trade offers or exposes for sale or hire in Namibia an article/s, to wit: Selling three (3) DVD discs without a licence of the owner of the copyright whilst knowing that such sale, letting, trade or exposure for sale or hire in Namibia would constitute an infringement of the copyright of that article/s."

Count 2

"THAT THE ACCUSED IS/ARE GUILTY OF SELLING, LETTING OR EXPOSING FOR SALE OR HIRE AN ARTICLE THAT CONSTITUTES AN INFRINGEMENT OF A COPYRIGHT.

That the accused is guilty of **CONTRAVENING SECTION 29(2)(b)** read with **SECTIONS 1, 29(1), 29(3), 29(4) & 33 of the COPYRIGHT AND NEIGHBOURING RIGHTS PROTECTION ACT, ACT NO 6 OF 1994.**

In that upon or about 6th day of April 2006 and at or near Spandiens Motors in the district of Gobabis the accused did wrongfully and intentionally sell, let or by way of trade offers or exposes for sale or hire in Namibia an article/s, to wit: exposing for sale nineteen (nineteen) 19) DVD discs without a licence of the owner of the copyright whilst knowing that such sale, letting, trade or exposure for sale or hire in Namibia would constitute an infringement of the copyright or that article/s."

[2] The accused pleaded guilty to both counts, but pleas of not guilty were entered after he was questioned in terms of section 112(1)(b) of the **Criminal Procedure Act 1977 (Act 51 of 1977)**. In respect of count 1 he admitted that he sold three DVD's on the date and at the place in question, but that he did not know that he needed a licence from the owner of the copyright

to do so. In respect of count 2 he admitted that he had been in possession of nineteen DVDs on the date and at the place in question.

The court *a quo* rejected the accused's defence of ignorance of the law as not being a defence in law. The Court also considered whether there was not a duplication of charges, but, having considered the provisions of the Act, came to the conclusion that this was not the case and convicted the accused on both counts. He was **sentenced to a fine of N\$2000 or six months imprisonment on the first count and to a fine of N\$4000 or twelve months imprisonment on the second count. The court further ordered that if the fine on the first count is not paid, the period of six months imprisonment would run concurrently with the twelve months imprisonment on count 2.**