



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case number: R03/2026

Magistrate's Case No: A39/2025

In the matter between

THE STATE

and

MPHO JONAS JAMES

ACCUSED

Neutral citation: *S v James* (R03/2026) [2026] ZAFSHC 111 (23 March 2026)

Coram: DANISO J *et* MHLAMBI ADJP

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 23 March 2026 at 11h00.

ORDER

The order of the district court, Lejweleputswa in respect of count 3 is reviewed, set aside and replaced with the following:

- '(a) The accused is found guilty of theft.
- (b) The matter is remitted to the district court, Lejweleputswa for the purpose of sentencing afresh.'

JUDGMENT

Daniso J (Mhlambi ADJP concurring)

[1] On 23 June 2025 the accused appeared legally represented in the district court, Lejweleputswa held at Theunissen. He was initially charged with three counts of housebreaking with intent to steal and theft. The State alleged that on 30 December 2024 the accused broke into Mr TS Markus's residence and stole clothes and groceries (count 1); on 15 January 2025 he broke into Mr NB Thota's residence and stole his clothes and groceries (count 2) on 22 January 2025, he broke into Mr C Mbangani's house and stole his solar battery, speaker and solar FM (count 3). At the commencement of the proceedings, count 1 was withdrawn by the State.

[2] The accused pleaded guilty to the remaining counts. He was summarily convicted on the basis of his statements as provided for in s 112(2) of the Criminal Procedure Act 51 of 1977 (CPA). He was subsequently sentenced to nine months' imprisonment wholly suspended for five years with conditions in respect of count 2. A sentence of twelve months imprisonment wholly suspended for five years was imposed in respect of count

3. In terms of s 103 (1) of the Firearms Control Act 60 of 2000, the magistrate determined that 'the accused is not declared unfit to possess a firearm.'

[3] This is a special review submitted by the senior magistrate, Welkom, in terms of s 304(4) of the CPA. It pertains to the conviction of the accused based on his guilty plea in relation to count 3.

[4] The issue that arises from the senior magistrate's referral is that the conviction cannot stand as having regard to the accused's s 112(2) statement, his admissions relate to stealing Mr. Mbangani's property after gaining entry into his residence through an open window, the accused made no admission pertaining to breaking into the property which is an essential element of the charge of housebreaking with intent to steal and theft. Therefore, the accused ought to have been convicted of theft. It follows too that the sentence imposed necessitates this Court's intervention.

[5] In response to the senior magistrate's query, the learned magistrate conceded that the accused ought to have been convicted of theft as he did not admit to breaking into Mr. Mbangani's house.

[6] The relevant part of the accused's s 112(2) statement (para 7) reads as follows: 'My plea of guilty is based on the following facts:

On the day of the incident I went to D32 Asijiki Theunissen, I went through an open window of the house as I could see there is no one. I then saw the said items being car battery, solar battery, speaker and solar FM and decided to take them and go sell them . . .'

[7] 'Breaking of premises' with the intention of committing a crime in the legal sense constitutes the removal or displacement of any obstruction to entry of a structure which forms part of the premises.¹ In the context of this matter, the removal component of this offence required the accused to admit to having opened, even partially the window in order to gain entry into Mr. Mbangani's house to qualify as an admission to the 'breaking' element of the offence. Based on the absence of this admission, it has not been established that the accused admitted all the elements of the offence to which

¹ *S v Hlongwane* 1992 SACR 484 N.

he has pleaded guilty. The proceedings are thus not in accordance with justice, they stand to be set aside.

Order

[8] In the premises, I make the following order:

The order of the district court, Lejweleputswa in respect of count 3 is reviewed, set aside and replaced with the following:

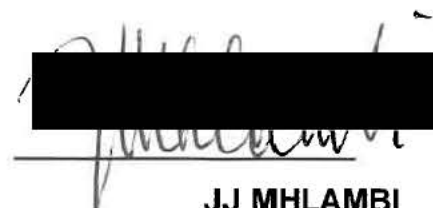
- (a) The accused is found guilty of theft.
- (b) The matter is remitted to the district court, Lejweleputswa for the purpose of sentencing afresh.'

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The Honourable Justice
2026-03-23
S. Daniso

NS DANISO
JUDGE OF THE HIGH COURT

I concur and it is so ordered.



JJ MHLAMBI
JUDGE OF THE HIGH COURT