

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK
REVIEW JUDGMENT
PRACTICE DIRECTION 61

Case Title: The State v Eben Higoam	Case No: CR 26/2024
High Court MD Review No: 215/2024	Division of Court: High Court, Main Division
Coram: Christiaan J <i>et</i> Shivute J	Delivered: 28 March 2024
Neutral citation: <i>S v Higoam</i> (CR 26/2024) [2024] NAHCMD 142 (28 March 2024)	
ORDER: <ol style="list-style-type: none">1. The conviction is confirmed.2. The sentence is confirmed but amended to read: 'In terms of s 8 of the Abuse of Dependence-Producing Substances and Rehabilitation Centres Act 41 of 1971, the unquantifiable grams of cannabis is forfeited to the State.'	
REASONS:	
CHRISTIAAN J (SHIVUTE J concurring):	

[1] This is a review from the magistrate's court for the district of Bethanie. Accused was charged with a contravention of s 2(b) read with ss 1, 2(i) and/or (iv), 7, 8, 10, 14 and Part I of the Schedule of Act 41 of 1971, as amended – Possession of dependence-producing substances, to wit, an unquantifiable amount of cannabis, he pleaded guilty and was sentenced to N\$1500 or 6 months' imprisonment. In terms of s 35 of the Criminal Procedure Act 51 of 1977 (the CPA), the unquantifiable quantity of cannabis was forfeited to the State.

[2] When the matter came on review, the following query was directed to the trial court:

'Can the learned magistrate explain why the forfeiture order was not made in terms of s 8 of the Abuse of Dependence-Producing Substances and Rehabilitation Centres Act 41 of 1971?'

[3] In response, the magistrate concedes that it was an oversight on his part to not invoke the provisions of s 8 of the Abuse of Dependence-Producing Substances and Rehabilitation Centres Act 41 of 1971 (the Act). He further asks this court to confirm the conviction and remit the matter for s 8 of the Act to be invoked. The concession is rightly made and the conviction will be confirmed.

[4] It is clear from the record that the trial court made a forfeiture order but not one in terms of the prescribed legislation. Instead, it made one in terms of s 35 of the CPA which finds no application in the present instance.

[5] Section 8(1) of the Act provides as follows:

'Notwithstanding anything to the contrary in any law contained, the court convicting any person of an offence under this Act shall declare - (a) any dependence-producing drug or any plant from which such drug can be manufactured, which was used for the purpose of or in connection with the commission of the offence or which was found in the possession of the convicted person . . . to be forfeited to the State.'

[6] It goes without saying that the provisions of the wrong Act were applied in the present matter as far as the making of the forfeiture order was concerned and this will be

corrected.

[7] In the result, it is ordered:

1. The conviction is confirmed.
2. The sentence is confirmed but amended to read: 'In terms of s 8 of the Abuse of Dependence-Producing Substances and Rehabilitation Centres Act 41 of 1971, the unquantifiable grams of cannabis is forfeited to the State.'

**P CHRISTIAAN
JUDGE**

**N N SHIVUTE
JUDGE**