

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI

REVIEW JUDGMENT

Case Title: <i>The State v Immanuel Kerina Kuzatjike</i>	Case No.: CR 41/2022 Opuwo: OPU-CRM-1273/2017
	Division of Court: Northern Local Division
Heard before: Honourable Lady Justice Salionga J et Honourable Mr Justice Kessler AJ	Delivered on: 08 September 2022
Neutral citation: <i>S v Kuzatjike</i> (CR 41/2022) [2022] NAHCNLD 86 (08 September 2022)	
It is hereby ordered that: <ol style="list-style-type: none">1. The conviction and sentence on count 1 are set aside.2. The matter is remitted to the Opuwo Magistrate's Court in terms of section 312 of the Criminal Procedure Act, 51 of 1977 to comply with the provisions of section 112 (1)(b) of the Act regarding count 1 and bring this matter to its natural conclusion.3. In the event of a conviction, the magistrate must take into consideration the period which the accused has already served.4. The convictions and sentences regarding the alternative to count 2 and count 3	

are confirmed.

5. The order made, disqualifying the accused in terms of section 51 (2)(b) of Act 22 of 1999, is set aside.

Reasons for the order:

KESSLAU AJ (SALIONGA J concurring):

[1] The matter comes before this court on automatic review in terms of Section 302 of the Criminal Procedure Act 51 of 1977, as amended (the CPA).

[2] The accused, in the Magistrates Court of Opuwo, was charged with various counts under the Road Traffic and Transport Act 22 of 1999. This court's query lies only against the first count. The additional charges appear to be in accordance with justice and they will be confirmed.

[3] The accused, on count 1 was charged with the contravention of section 82(1)(a), read with sections 1, 86, 89(1) and 89(4) of the Road Traffic and Transport Act 22 of 1999: Driving under the influence of intoxicating liquor. The accused plead guilty to the charge, was questioned in terms of section 112(1)(b) of the CPA and convicted. Thereafter the accused, against whom the State proved various relevant previous convictions, was sentenced to eighteen months imprisonment. Additionally his driver's licence was suspended for a period of 12 months in terms of section 51 of Act 22 of 1999.

[4] I queried the learned Magistrate in respect of count 1 as follows:

'Regarding the charge of Contravening Section 82(1)(a) of Act 22 of 1999: Driving under the influence of intoxicating liquor, how was the learned Magistrate satisfied from the questions posted that the faculties of accused were impaired and his driving skills affected by the consumption of alcohol?'

[5] The magistrate in reply conceded that the element was not included during questioning.

[6] It is well established in our law that, when charged with the offence of driving under the influence of intoxicating liquor, it is not sufficient that an accused admits he was drunk when driving the vehicle as the court, from its questioning, must be satisfied that faculties of accused were impaired which affected his driving skills.¹

[7] *In casu* the court failed to question the accused in order to ascertain whether the accused's faculties or driving skills were impaired to any extent. In the absence thereof the court could not have been satisfied that the accused admitted the elements of the offence charged, thus the conviction will be set aside.

[8] In the result the following order is made:

1. The conviction and sentence on count 1 are set aside.
2. The matter is remitted to the Opuwo Magistrate's Court in terms of section 312 of the Criminal Procedure Act, 51 of 1977 to comply with the provisions of section 112 (1)(b) of the Act regarding count 1 and bring this matter to its natural conclusion.
3. In the event of a conviction, the magistrate must take into consideration the period which the accused has already served.
4. The convictions and sentences regarding the alternative to count 2 and count 3 are confirmed.
5. The order made, disqualifying the accused in terms of section 51 (2)(b) of Act 22 of 1999, is set aside.

Judge(s) signature	Comments:
KESSLAU AJ	None
SALIONGA J	None

¹ *S v Awa-Eiseb* (CR 03/2015) [2015] NAHCMD 12 (30 January 2015); *S v Tjiharuka* (CR 12-2016) [2016] NAHCNLD 79 (23 August 2016); *S v Katuuu* (CR 12/2015) [2015] NAHCMD 64 (18 March 2015); *S v Cloete* 1994 NR 190