

THE STATE VERSUS VALENTINE FONSECA

1994/06/01

LEVY, J et HANNAH, J

CRIMINAL PROCEDURE

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CASE NO. . . ~!?!9!?! .

IN THE HIGH COURT OF NAMIBIA

In the matter between

THE STATE

versus

VALENTINE FONSECA

(HIGH COURT REVIEW CASE NO. 1550/94)

CORAM: LEVY et HANNAH, JJ.

Delivered on: 1994/06/01

REVIEW JUDGMENT

HANNAH, J.: The accused appeared before the Windhoek Magistrate's court and pleaded guilty to a charge of driving under the influence of intoxicating liquor in contravention of section 140(1)(a) of the Road Traffic Ordinance, 1967. He was then dealt with in terms of section 112(1)(a) of the Criminal Procedure Act, 51 of 1977, and was sentenced to a fine of N\$600 or three months imprisonment in default of payment.

The procedure under section 112(1) (a) should only be applied in the case of minor offenses and in my view the offence

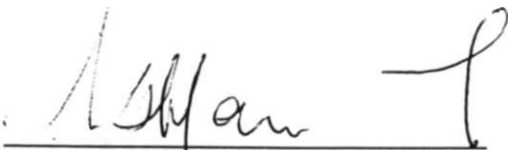
created by section 140(1)(a) does not fall into that category. The magistrate's reason for taking such an exceptional course was that on the day the matter was dealt with he had more than one hundred cases on his roll and had no time to follow the procedure set out in section 112(1) (b) . Although he has my sympathy that, of course, is no proper excuse for taking improper short cuts. Some other solution should be looked for.

Having decided, albeit erroneously, to deal with the matter in terms of section 112(1)(a) the magistrate also erred in imposing a fine of N\$600. When an accused is dealt with in terms of that section the maximum permissible fine is N\$300.


In all the circumstances I will vary the sentence to a fine of N\$300.

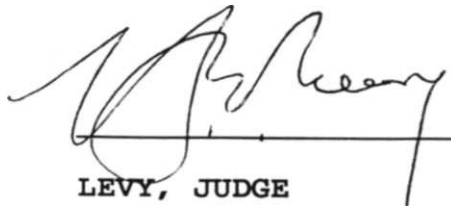
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It is ordered that the conviction is confirmed but the sentence is varied to a fine of N\$3 00 or three months imprisonment in default of payment.



HANNAH, JUDGE





LEVY, JUDGE