

**171/07**

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**THE STATE**

versus

**BENJAMIN SHIVUTE**

**(HIGH COURT REVIEW CASE NO.: 1636/07)**

**CORAM: MAINGA, J et VAN NIEKERK, J**

Delivered on: 2007-12-13

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**REVIEW JUDGMENT:**

**VAN NIEKERK, J:**

[1] In this case the accused was convicted by the Magistrate, Ondangwa, on a charge of reckless driving in contravention of section 80(1) of the Road Traffic and Transport Act, 1999 (Act 22 of 1999). He was sentenced to a fine of N\$4000 or two years imprisonment. The accused was given the opportunity to pay the fine in instalments.

[2] The magistrate suspended the accused's driving licence for three years without giving the accused any opportunity to address him or to lead any evidence on the subject.

[3] The accused was informed of his right to forward a written statement to the reviewing judge in terms of section 303 of the Criminal Procedure Act, 1977. The accused made use of this opportunity, albeit more than 2½ months late, after which the matter was forwarded on review.

[4] In his letter the accused explained that he was employed at the

time of the offence for a courier services provider as a driver and he is running the risk of losing his employment because of the suspension of this licence. He attaches a letter by his employer confirming that he is to be discharged unless he is able to obtain a driving licence.

[5] It was, of course, irregular for the magistrate to suspend the accused's driving licence for longer than the compulsory minimum period of three months without hearing the accused. When the accused made his statement in mitigation of sentence, he did not mention the fact that his livelihood depends on him having a driving licence or that his job was that of driver. If the magistrate had heard him on the issue of the suspension of the licence, I am sure that the accused would have mentioned these facts. In his letter the accused does not seem to have any problem with the fine imposed. The gist of his letter is directed at the suspension of the licence. Although the accused was not heard at the time, there are now sufficient facts on which this Court can determine the period of suspension.

[6] From the evidence led it is clear that the accused was in a hurry to make deliveries of blood, that he was late and that he drove too closely to the vehicle in front of him. When that vehicle suddenly braked and stopped for a dog, he could not stop in time. He could also not swerve off the road to the left as there was a ditch. He therefore took the risk to swerve to the right in the face of oncoming traffic, which he could not see, and caused a head-on collision on the right side of the road. The accused is a 30 year old offender, who had been employed as a driver for 12 years. During the accident no serious injuries were caused. In view of all the circumstances I think a suspension of 6 months would suffice.

[7] Accordingly the following order is made:

1. The conviction and sentence are confirmed.
2. The order suspending the accused's licence and any driving licence which the accused may hold is set aside and substituted with the following order:

"Every driving licence which the accused, Benjamin

Shivute, Identity Number 7411100259, holds is hereby suspended for a period of 6 (six) months with effect from 10 May 2007."

3. The Registrar of this High Court shall forward a copy of this judgment to Benjamin Shivute by registered post to PO Box 81060, Olympia and by fax to fax no. 061-225706, Windhoek.

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**VAN NIEKERK, J**

I agree

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**MAINGA, J**