



CASE NO.: CR

48/2011

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

SOFIA KANDUME

[HIGH COURT REVIEW CASE NO.: 980/2011]

CORAM: SWANEPOEL, J et SIBOLEKA, J

Delivered on: 2011 JUNE 01

REVIEW JUDGMENT

SIBOLEKA, J.:

[1] The 27 year old accused appeared before the Magistrate's Court at Katutura on a charge of Dealing in liquor without a licence in contravention of Act no. 6 of 1998.

[2] The charge put to the accused reads:

“DEALING IN LIQUOR WITHOUT LICENCE

That the accused is/are guilty of contravening Section 71(1)(n) read with Sections 1,2(1), 71(2), 71(3) and 72 of Act 6 of 1998.

In that upon or about the **4th** day of **DECEMBER 2010** and at or near **KATUTURA, SUNAMI BAR** in the district of **WINDHOEK** the accused whether or not he/she is a licence holder, did wrongfully and unlawfully sell, supply or deliver liquor to wit **BEER** without a current licence.”

[3] Section 71(1)(N) of the Liquor Act No. 6 of 1998 reads:

“71(1) (N): Any person, whether or not she is a licence holder, who sells, supplies or delivers liquor in contravention of or in any manner other than as provided for in Section 2(1) or any other provision of this Act shall be guilty of an offence.”

[4] Section 2(1) of the same Act referred to in the above section reads:

“2.(1) Subject to section 76 or 77, no person shall sell liquor, except pursuant to and in terms of a current license authorizing the sale of such liquor”

Section 76 refers to exempt transactions while section 77 refers to exemptions from licensing.

[5] In this Act liquor is defined as:

“ ‘liquor’ means –

- (a) Any spirituous liquor or any wine or beer containing three percent or more by volume of alcohol, excluding mentholated spirit;
- (b) Tombo or any other fermented, distilled, spirituous or malted drink, traditional or non-traditional, which contains three percent or more by volume of alcohol;
- (c) Any drink or concoction which the Minister by notice in the Gazette declares to be liquor,”

[6] The charge put to the accused refers to “beer” which is nowhere to be found in the Liquor Act and it is therefore defective for lack of specifying the type of liquor for which the accused has been arrested as well as its volume of alcohol percentage.

[7] For the reasons afore-stated the conviction and sentence cannot be allowed to stand.

[8] In the result both conviction and sentence are set aside and the accused must be refunded the monies she may have paid for Court fine.

SIBOLEKA, J

I agree.

SWANEPOEL, J