



CASE NO.: CR 67/2012

NOT REPORTABLE

IN THE HIGH COURT OF NAMIBIA

MAIN DIVISION, HELD AT WINDHOEK

In the matter between:

THE STATE

and

IMMANUEL ILENI IIPINGE

HIGH COURT REVIEW CASE NO.: 1251/2012

CORAM: HOFF, J *et* MILLER, AJ

Delivered on: 18 July 2012

SPECIAL REVIEW JUDGMENT

HOFF, J: [1] The accused was convicted in the magistrate's court of reckless or negligent driving in contravention of section 80(1) of the Road Traffic and Transportation Act, 22 of 1999 as amended, and sentenced to a fine of N\$1 000.00 or 6 months imprisonment.

The accused was convicted of his plea of guilty in terms of section 112(1)(a) of Act 51 of 1977. The fine was paid on the same day.

[2] The presiding magistrate who forwarded this case on special review stated that the State did not distinguish between reckless and negligent driving and that the court also did not rectify the “anomaly” prior to convicting the accused.

[3] The presiding magistrate stated having regard to the fine imposed by the court the only reasonable inference to be drawn is that the accused had been found guilty of negligent driving. The magistrate requested that the accused be convicted of negligent driving.

[4] This is another example where the expeditious finalisation of a trial in terms of section 112(1)(a) was given preference to the need to question an accused in terms of section 112(1)(b) where an accused is charged with a serious offence. Had the magistrate applied the provisions of section 112(1)(b) it would not have been necessary for him to have sent this matter on special review.

[5] Nevertheless I agree with the magistrate that the conviction of reckless or negligent driving is not legally sound.

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

1. The accused is convicted of negligent driving in contravention of section 80(1) of Act 22 of 1999.
2. The sentence is confirmed.

HOFF, J

I agree

MILLER, AJ