



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CR 77/2012

In the matter between:

**THE STATE**

**APPLICANT**

and

**TEELE EDGAR LEPHEAN**

**RESPONDENT**

*(HIGH COURT REVIEW CASE NO.: 1714/2012)*

**Neutral citation:** *State v Lephean* (CR 77/2012) [2012] NAHCMD 8 (3 October 2012)

**Coram:** NDAUENDAPO J *et* PARKER AJ

**Delivered:** 3 October 2012

**Flynote:** Criminal law – Offence under the Road Traffic and Transport Act 22 of 1999 – Trial magistrates' court failing to apply s 51 of the Act – Record of proceedings of the case submitted for special review.

**Summary:** Criminal law – Accused convicted of contravening s 85(a) of the Act – Trial magistrates' court failing to apply mandatory provision of the Act – Upon special review, court confirming conviction and sentence and returning file to trial court with an order that accused be summoned to court to enable the learned magistrate to apply s 51 of the Act.

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**ORDER**

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- (a) The conviction and sentence respecting count 2 are confirmed.
- (b) The conviction and sentence respecting count 1 are confirmed.
- (c) The learned magistrate must summon the accused in court for the purpose of applying s 51 of the Road Traffic and Transport Act No. 22 of 1999.

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**JUDGMENT**

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PARKER AJ (NDAUENDAPO J concurring):

[1] The accused was charged before the magistrates' court, Karibib, with two counts, namely, driving with an excessive breath alcohol level in contravention of s 82(5)(a), read with ss 1, 82(6), 82(7), 86, 89(1) and 89(4), of the Road Traffic and Transportation Act 22 of 1999 (count 1); (and reckless or negligent driving – in contravention of s 80(1), read with ss 1, 49, 50, 51, 83(3), 86,89,106,107 and 108, of the Road Traffic and Transportation Act 22 of 1999 (count 2). The accused was convicted on both counts and sentenced accordingly. The record of proceedings in the case has been submitted to me for special review, and in this regard, the learned magistrate writes in a covering note that the 'accused was convicted upon questioning on one count and evidence led on another. During inspection, it was pointed out to me that I had, as prescribed by the Road Traffic and Transportation Act, Act 22 of 1999, failed to suspend the Driver's Licence'.

[2] Since the accused was convicted on count 1, it was mandatory for the learned magistrate to have applied s 51 of the Road Traffic and Transport Act 22 of 1999 ('the Act'). The learned magistrate has no discretion in the matter under s 51(1) of

the Act. The discretion he has is only under s 51(2) which concerns only the determination of the period of suspension. In that behalf, to enable the learned magistrate to exercise his discretion under s 51(2) judicially, he must hear the accused before determining the period of suspension of the accused's drivers licence.

[3] It follows that the learned magistrate failed to apply the mandatory provisions of the Act. Consequently, I make the following order:

- (a) The conviction and sentence respecting count 2 are confirmed.
- (b) The conviction and sentence respecting count 1 are confirmed.
- (c) The learned magistrate must summon the accused in court for the purpose of applying s 51 of the Road Traffic and Transport Act No. 22 of 1999.

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C Parker  
Acting Judge

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N Ndauendapo  
Judge