



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CR: 80/2012

In the matter between:

THE STATE

and

SHIKODHI ONESMUS PANDULENI

HIGH COURT REVIEW CASE NO.: 1092/2012

Neutral citation: *The State v Panduleni* (CR 80/2012) [2012] NAHCMD 26
(15 October 2012)

Coram: HOFF, J and SHIVUTE, J

Delivered: 15 October 2012

Flynote: Copy — control document used as second count

Summary: Copy of control document used as second count – Accused sentenced twice for same traffic offence – Second conviction and sentence set aside.

ORDER

In the result the following orders are made:

- (a) The conviction and sentence in respect of count 2 is set aside.
- (b) The conviction in respect of count 1 is confirmed but the sentence is set aside and substituted with the following sentence:
N\$2 000 or six months imprisonment.
- (c) The accused is to be brought before court and the magistrate is instructed to impose a sentence in respect of the conviction for contempt of court.
- (d) The accused when so brought before court must be informed that the conviction and sentence in respect of count 2 had been set aside.

JUDGMENT

HOFF J (SHIVUTE J concurring):

[1] The accused person appeared in the Rundu Magistrate's Court on the following traffic offence: reg 127(1)(B) r/w 1, 128, 129, 134, 369 GN 53/01 r/w sec 1, 33, 86, 89 the Road Traffic and Transport Act, 1999 (Act 22 of 1999) ie driving a motorvehicle on a public road conveying passengers for reward while he is not endorsed with a professional authorisation, simply put, that he operated a taxi without a licence. He was found guilty of two counts and sentenced in respect of each count to N\$2000 or 10 months imprisonment.

[2] The magistrate sent the matter on review stating that the 'sentence on count 2 is incompetent on the jail term'. It was explained that the penalty prescribed by the Act is one of imprisonment not exceeding six months imprisonment.

[3] It is apparent from the record that the accused appeared before court on a warrant and that the court had question him in respect of his failure to appear in court on a date of trial as indicated on the control document. His explanation was not accepted. It is further apparent from the record regarding the traffic offences that those offences had been finalised in terms of the provisions of section 112(1)(a) of Criminal Procedure Act, 1977 (Act 51 of 1977).

[4] I directed the following query:

'Please provide me with the following information:

1. What was the outcome of the enquiry into the accused's failure to appear in court ?
2. Which were the two offences the accused had been convicted of ? On the control document a serial number, 589373 appears. This same number appears on a copy of the control document. Was this copy of the control document read out in court as the second charge against the accused? '

[5] The reply of the magistrate reads inter alia as follows:

'The accused person was convicted of conveying persons for a reward without an endorsement of professional authorization as reflected on traffic ticket no. 589373 as well as contravening Section 55(1) Act 51/77 as amended by Act 13/2010

The reason why the traffic ticket is carrying the same number is because the copy is a duplicate of the original ticket.

The copy of the control document was never read to the accused person as a second charge against the accused.

If it was so accused could have been fined thrice which is not the case.'

[6] It appears from the record (Annexure B) that the accused was questioned for his failure to appear in court. The accused gave an explanation which ended as follows;

'I must be blamed'.

[7] The following then appears on the record:

'Ruling: No explanation at all.'

[8] This I understand to mean that the magistrate did not accept the explanation for failing to appear in court.

[9] The record reads further as follows:

'PP: Reads out the charge in open court.
Accused understands and pleads guilty.
Act 51/77/112(1)(a) applied.

Verdict: Both Counts guilty.'

[10] The following appears on the same page of the proceedings:

'PP: We propose N\$2 000.00 on the main charge, alternative ten months imprisonment and N\$800.00 or eight months imprisonment.

Sentence: He is a first offender who is convicted of two serious crimes. The Court is duty bound to impose sentences with deterrent effect.

See charge sheet.'

[11] These sentences appearing on the charge sheet read as follows:

'Count 1: Fined N\$2 000.00 or ten months imprisonment.
Count 2: Fined N\$2 000.00 or ten months imprisonment.'

[12] The record of the proceedings reflects that no sentence was imposed in respect of the conviction for contempt of court.

[13] I agree with the magistrate that the copy is a duplicate of the original ticket, but the inference is inescapable that in view of the fact that no sentence had been imposed in respect of the failure to appear in court that the accused had been convicted twice for the same offence irrespective of whether the copy of the control document was read out as a second charge or not.

[14] Count 2 is a mirror image of count 1 in respect of the charge, conviction and sentence imposed.

[15] In the result the following orders are made:

- (a) The conviction and sentence in respect of count 2 is set aside.
- (b) The conviction in respect of count 1 is confirmed but the sentence is set aside and substituted with the following sentence:
N\$2 000 or six months imprisonment.
- (c) The accused is to be brought before court and the magistrate is instructed to impose a sentence in respect of the conviction for contempt of court.
- (d) The accused when so brought before court must be informed that the conviction and sentence in respect of count 2 had been set aside.

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E P B HOFF
Judge

N N SHIVUTE
Judge