



CASE NO.: CR 04/2012

**IN THE HIGH COURT OF NAMIBIA
HELD AT OSHAKATI**

In the matter between:

THE STATE

and

SHIDOLO WALDE

(HIGH COURT REVIEW CASE NO.: 26/2012)

CORAM: LIEBENBERG, J. *et* TOMMASI, J.

Delivered on: 21 February 2012

REVIEW JUDGMENT

LIEBENBERG, J.: [1] The accused appeared before the Magistrate's Court, Oshakati and pleaded guilty on a charge of contravening s 72 (1)(n) of the Liquor Act¹ in that he unlawfully sold beer. Although it is not alleged in the charge that the accused acted without being the lawful holder of a liquor

¹ Act No 6 of 1998

licence issued to him in terms of the Act or in contravention with such licence – thereby omitting an essential ingredient from the charge, making it as such defective – the magistrate, when questioning the accused in terms of s 112 (1) (b) of the Criminal Procedure Act², did elicit answers from the accused according to which he admitted that when selling the liquor, he was not the holder of a valid licence; thus, curing the defect in the charge. The conviction is in order and must be confirmed.

[2] However, there is a need for the prosecution to meticulously formulate charges against accused persons, especially where the trial court during questioning in terms of s 112 (1)(b) would be guided by the elements of the charge and the allegations contained therein. Slovenly or ill-considered charges could lead to a miscarriage of justice and should be avoided at all times.

[3] The wording of the sentence imposed by the court is not only clumsy, but the word “committed” was also omitted as a condition of suspension. Hence, the sentence is amended to read as follows:

‘N\$2 000 or 12 months’ imprisonment of which N\$1 000 or 6 months’ imprisonment is suspended for 2 years on condition that the accused is not convicted of the offence of selling liquor without a licence (c/s 72 (1)(n) of Act 6 of 1998), committed during the period of suspension.’

The sentence date remains the same.

² Act No 51 of 1977

LIEBENBERG, J

I concur.

TOMMASI, J