



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CR 26/2013

In the matter between:

THE STATE

and

RICHARD H HEITA

HIGH COURT REVIEW CASE NO.: 395/2013

Neutral citation: *State v Heita* (CR 26/2013) [2013] NAHCMD 101
(16 April 2013)

Coram: HOFF J and SHIVUTE J

Delivered: 16 April 2013

Summary: Accused convicted of two statutory contraventions under the Road Traffic Act 22 of 1999 after pleas of guilty — The questioning by the magistrate in respect of a charge of contravening s 82(1) of Act 22 of 1999 (driving under the influence of liquor) was incomplete and was as such conceded by the presiding magistrate — The matter is referred back to magistrate to complete his questioning.

ORDER

- (a) The conviction in respect of the first count (driving under the influence of liquor) is set aside.
- (b) The conviction in respect of the second count is confirmed.
- (c) The sentence is set aside.
- (d) The matter is referred back to the presiding magistrate in order to complete his questioning in respect of the first count.
- (e) Should the magistrate be satisfied that the accused admitted all the allegations in the charge sheet he should sentence the accused in respect of this first count and thereafter impose a separate sentence in respect of the second count.
- (f) If the presiding magistrate is not so satisfied he should enter a plea of not guilty and order the public prosecutor to lead the testimony of witnesses.

JUDGMENT

HOFF J (SHIVUTE J concurring):

[1] The accused was charged with the offences of contravening section 82(1) of the Road Traffic and Transport Act 22 of 1999 (driving a motor vehicle under the influence of liquor) and contravening section 31(1)(a) of Act 22 of 1999 (driving a motor vehicle without a driver's licence).

[2] The counts were taken together for purpose of sentence and the accused was sentenced to a fine of N\$2000 or 6 months imprisonment in default.

[3] This court has in the past in various review judgments impressed it upon magistrates the undesirability of taking, especially statutory contraventions, together for purpose of sentence, which I need not repeat at this stage.

[4] I directed the following query to the presiding officer:

‘Please provide me with your reasons for convicting the accused on the charge of driving a motor vehicle under the influence of liquor’.

[5] It is apparent from the record that the accused pleaded guilty to both counts and was subsequently questioned in terms of the provisions of section 112(1)(b) of Act 51 of 1977.

[6] The aforementioned query was the result of inadequate questioning by the magistrate.

[7] The presiding officer *inter alia* replied as follows;

‘The limited questions by the court do not embrace all the elements of the offence to warrant a conviction. The questions should have been asked as per attached pro-forma. In the event all questions are answered in the affirmative that could have covered all elements of the offence.’

This concession was made wisely.

[8] I am satisfied that the conviction in respect of the second count (driving without a driver’s licence) is in order.

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

- (a) The conviction in respect of the first count (driving under the influence of liquor) is set aside.

- (b) The conviction in respect of the second count is confirmed.
- (c) The sentence is set aside.
- (d) The matter is referred back to the presiding magistrate in order to complete his questioning in respect of the first count.
- (e) Should the magistrate be satisfied that the accused admitted all the allegations in the charge sheet he should sentence the accused in respect of this first count and thereafter impose a separate sentence in respect of the second count.
- (f) If the presiding magistrate is not so satisfied he should enter a plea of not guilty and order the public prosecutor to lead the testimony of witnesses.

E P B HOFF
Judge

N N SHIVUTE
Judge