

REPUBLIC OF NAMIBIA

IN THE HIGH COURT OF

NAMIBIA, MAIN DIVISION

JUDGMENT

Case no: CR



30/2013

In the matter between:

THE STATE

and

IMMANUEL HAIPINGE

ACCUSED

(HIGH COURT MAIN DIVISION REVIEW REF NO.: 1786/2012)

Neutral citation: The State v Haipinge (CR 30/2013) [2013] *NAHCMD 114*
(29 April 2013)

CORAM: SMUTS, J et GEIER, J

Delivered on: 29 April 2013

Flynote: The conviction of failing to appear and the sentence of a fine N\$100 or 1 month imprisonment imposed on the accused by the Windhoek Magistrate court are hereby set aside.

ORDER

The conviction and sentence for failing to appear cannot stand on the unusual facts raised in this matter and are hereby set aside.

JUDGMENT

SMUTS, J.: [1] This is a special review forwarded by the presiding magistrate for the district of Windhoek in respect of a conviction and sentence passed on 4 September 2012. The accused was on that date convicted for failing to appear and sentenced to a fine of N\$100 or 1 month imprisonment.

[2] The accused was charged with assault read with s 21 of the Combating of Domestic Violence Act, 4 of 2003. He was arrested and appeared on 12 July 2012. The case was then postponed to 21 August 2012 and the accused was granted bail in the sum of N\$300. He however failed to appear on 21 August 2012 and the court below correctly ordered that a warrant of arrest be issued and that bail was provisionally cancelled and the bail money provisionally forfeited to the State. The return date was set for 4 September 2012.

[3] After the matter was called on 4 September 2012, a person appeared and was asked by the court below to provide an explanation for his absence on 21 August 2012. The court was not satisfied with the explanation given and found the accused guilty of failing to appear and sentenced him to a fine of N\$100 or one month's imprisonment. Bail was reinstated and extended and the warrant of arrest was cancelled.

[4] On the next day, 5 September 2012, the matter was called in court again. The accused was absent and the prosecutor informed the court that the person who had appeared and was convicted on the previous day was not in fact the accused but a certain Agrippe Nangolo. The prosecutor requested that the warrant for the arrest of the accused be reinstated and that bail be finally be cancelled and the money be forfeited.

[5] The presiding magistrate proceeded to cancel bail and declare the bail money forfeited. A warrant for the accused's arrest was also authorised. The magistrate referred to the error in the conviction and sentence and requested that

they be set aside. This request is well placed in the circumstances. The conviction and sentence for failing to appear cannot stand on the unusual facts raised in this matter and are hereby set aside.

DF Smuts
Judge

I agree

H Geier
Judge