



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CR 39/2013

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

and

ANDREAS KAMATI

ACCUSED

(HIGH COURT MAIN DIVISION REVIEW REF NO.: 562/2013)

Neutral citation: The State v Kamati (CR 39/2013) [2013] NAHCMD 234 (5 August 2013)

CORAM: SMUTS, J et UEITELE, J

Delivered on: 5 August 2013

ORDER

That the conviction and sentence are confirmed.

JUDGMENT

SMUTS, J.: [1] This matter has come before me by way of automatic review. The accused was charged with the common law offence of uttering. The particulars of the charge were that on or about 18 January 2012 at or near Keetmanshoop the accused unlawfully, falsely and with intent thereby to defraud, and to the prejudice of Angala Filipus, offered, uttered and put off a forged document, to wit a drivers licence well knowing it to have been forged.

[2] The accused pleaded guilty to the charge. In the course of questioning by the magistrate under s 112 Act 51 of 1977, the accused acknowledged that he had presented a drivers licence to police at a roadblock, knowing that it was forged. He admitted that he did so with a view to deceive the police officer at the roadblock. He proceeded to admit the other elements of the offence.

[3] The presiding Magistrate correctly convicted the accused.

[4] No previous convictions were proved. In mitigation, the accused said that he was 30 years old, single with a child of four months old whom he supported. He said he was employed in Cape Town, South Africa and assisted his parents with their mahangu field in northern Namibia. He asked that a fine should be imposed.

[5] The magistrate then sentenced him to a fine of N\$1000 or 6 months imprisonment.

[6] Despite the fact that the accused was a first offender and the mitigating factors raised by him, I find that this sentence is remarkably and astonishingly light in the circumstances.

[7] Forgery and uttering is a serious offence. It involves dishonesty. What compounds matters in this instance is that a forged drivers licence was used by the accused to deceive the police. He acknowledged that he did not have a valid drivers licence. The forged licence was utilised to engage in an activity which was unlawful without possession of a licence – driving on public roads. The accused's deceitful conduct was thus directed at subverting the rule of law. In addition, driving without a valid licence would create a risk on the roads to other road users. These factors are in my view aggravating and should have been taken into account.

[8] In my view a custodial sentence was justified. Given the fact that he was a first offender, a portion could have been suspended within the discretion of a trial court.

[9] The conviction and sentence are confirmed. The purpose of this judgment is to express my dismay at the inappropriately light sentence imposed upon the accused.

DF Smuts
Judge

I agree

SFI Ueitele
Judge