



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK**

**JUDGMENT**

Case no: CR: 56/2013

In the matter between:

**THE STATE**

and

**AMBROSIUS RAINER LATELANG KGOSIEMANG**

**ACCUSED**

(HIGH COURT MAIN DIVISION REVIEW REF NO. 891/2012)

**Neutral citation:** *State v Kgosiemang* (CR 56/2013) [2013] NAHCMD 245 (15 August 2013)

**Coram:** HOFF J and SMUTS J

**Delivered:** 15 August 2013

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**ORDER**

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- (a) The conviction is confirmed.
- (b) The sentence is set aside and substituted with the following sentence:
- A fine of N\$2000 or 6 months imprisonment.
- (c) In the event of the accused having paid the fine of N\$12 000 the Ministry of Justice is ordered to refund the accused person the amount of N\$10 000.

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**JUDGMENT**

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HOFF J (SMUTS J concurring):

[1] The accused was convicted in the Karasburg Magistrate's Court of displaying a licence number not applicable to the vehicle in contravention of the provisions of Road Traffic Regulation 48(5)(a) of Government Notice 53 of 2001 read with certain provisions of the Road Traffic and Transport Act 22 of 1999 and sentenced to a fine of N\$12 000.00 or in default 24 months imprisonment. The sentence was imposed on 8 February 2012. The fine was deferred and the last payment of N\$1000 was to be made on 31 May 2012.

[2] I directed a query to the magistrate to the effect that having regard to the prescribed maximum penalty of a fine not exceeding N\$4000 or imprisonment for a period not exceeding 1 year or both such fine and imprisonment whether the sentence imposed was a competent sentence.

[3] The control magistrate at Keetmanshoop, Mr P Bekker, replied that the trial magistrate had already terminated his duties as magistrate by the time the case record with the query had reached the Magistrate's Office, Karasburg whereupon the clerk of the court simply filed the case record and the matter was never brought to the attention of the relief magistrate for his further attention.

[4] The control magistrate agrees that the sentence is an incompetent sentence and suggested that the sentence be amended to a fine of N\$2000 or 1 year imprisonment and an order that the N\$10 000 be refunded to the accused person.

[5] In terms of s 304(2)(c) of Act 51 of 1977 a review court inter alia may confirm, reduce, alter or set aside the sentence or any order of the magistrate's court, may impose such sentence as the magistrate's court ought to have given, and make any order connected with the proceeding as the court seems likely to promote the ends of justice.

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

(a) The conviction is confirmed.

(b) The sentence is set aside and substituted with the following sentence:

A fine of N\$2000 or 6 months imprisonment.

(c) In the event of the accused having paid the fine of N\$12 000 the Ministry of Justice is ordered to refund the accused person the amount of N\$10 000.

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E P B HOFF  
Judge

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D SMUTS

Judge