



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

**JUDGMENT**

Case no: CA 117/2013

In the matter between:

**DENNIS JENNIS GURIRAB**

**APPELLANT**

and

**THE STATE**

**RESPONDENT**

**Neutral citation:** *Gurirab v State* (CA 117/2013) [2014] NAHCMD 76 (28 February 2014)

**Coram:** HOFF J and SIBOLEKA J

**Heard:** 28 February 2014

**Delivered:** 28 February 2014 (*Ex tempore*)

**Judg. made available:** 11 March 2014

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## ORDER

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The conviction and sentence are set aside.

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## JUDGMENT

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HOFF J (SIBOLEKA J concurring):

[1] The appellant was convicted in the Omaruru Magistrate's Court of the offence of driving with an excessive breath alcohol level in contravention of s 82 (5) of the Road Traffic and Transport Act 22 of 1999 as well as exceeding the general speed limit in contravention of s 76(4) of the same Road Traffic and Transport Act and was sentenced in respect of the count 1 to four thousand Namibian dollars (N\$ 4000) or 18 months imprisonment. The same sentence was imposed in respect of the count 2.

[2] Counsel appearing on behalf of appellant *amicus curiae*, Ms Blaauw, as well as counsel appearing on behalf of the State, Mr Small, are in agreement that the conviction and sentence be set aside.

[3] The background is the following, after the State has led evidence an application was brought in terms of s 174 of the Criminal Procedure Act 51 of 1977 for the discharge of the accused. The magistrate in considering this application instead convicted the appellant of the said offences and sentenced him as stated to earlier. This is clearly a gross irregularity which vitiated the proceedings in the court *a quo*, and this court shares the view of counsel that the conviction and sentence be set aside.

[4] Accordingly the following order is made.

The conviction and sentence are set aside.

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E P B HOFF  
Judge

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A M SIBOLEKA  
Judge

APPEARANCES

APPELLANT:

S L Blaauw

*Amicus curiae*, Sharon Blaauw Attorneys

RESPONDENT:

D F Small

Office of the Prosecutor-General, Windhoek