

REPUBLIC OF NAMIBIA



**HIGH COURT OF NAMIBIA, MAIN DIVISION
REVIEW JUDGMENT**

CR NO: 63/2017

In the matter between:

THE STATE

and

CHRISTO HEYMAN

(HIGH COURT MAIN DIVISION REVIEW NO. 1431/2017)

(MAGISTRATE SERIAL NO. 73/2017)

Neutral citation: S v Heyman (CR 63/2017) [2017] NAHCMD 317 (8 November 2017)

CORAM: SHIVUTE J and SALIONGA AJ

DELIVERED: 8 NOVEMBER 2017

Flynote: Criminal Procedure - Section 51 of the Road Traffic and Transportation Act 22 of 1999 – Obligatory suspending of driving licence upon conviction of certain

offences – Accused was convicted of contravening s 82 (5) (a) driving a vehicle with an excessive breath of alcohol level– Accused a holder of a driving licence- Accused to be afforded opportunity to address Court as to why such an order should not be made - Such failure amounts to misdirection.

ORDER

1. The conviction and sentence are confirmed.
2. The order suspending the accused's driver's licence for three (3) months is set aside.
3. The matter is remitted to the magistrate in terms of section 312 of the Criminal Procedure Act 51 of 1977 to enable the court to explain to the accused the implications of the provisions of s 51 (3) and to invite the accused to make representations as to why his driver's licence should not be suspended before such an order is made.

REVIEW JUDGMENT

SHIVUTE J, (SALIONGA AJ CONCURRING)

[1] The accused was convicted of contravening s 82(5)(a) of the Road Traffic and Transportation Act 22 of 1999 – driving with an excessive breath of alcohol level.

[2] He pleaded guilty and the court found him guilty as charged. He was sentenced to pay a fine of N\$ 4000 (four thousand Namibian dollars) or to 12 months imprisonment. Coupled with this sentence, the magistrate applied the provisions of s 51 of the Road Traffic Act, which reads:

'51 Suspension of licence upon conviction of certain offences
(c) under section 82(1), (2), (5) or (9),

the court shall, apart from imposing a sentence and except if the court under section 50(1)(a) issues an order for the cancellation of the licence, issue an order whereby every driving licence held by such person is suspended in accordance with the provisions of subsection (2).'

[3] Before the accused's license was suspended, he was not afforded an opportunity to make representations as to why his driver's licence should not be suspended. I queried the learned magistrate as to why the provisions of s 51 of the Act were applied without giving the accused the opportunity to address the court as to why his driving licence must not be suspended. The learned magistrate rightly conceded and stated that it was an omission on his part. The provisions of s 51 must first be explained to the accused where after he be afforded the opportunity to lead evidence and/or address the court as to why his driving licence should not be suspended.

[4] I have no problem with the conviction as well as the sentence imposed. But since the learned magistrate failed to explain the provisions of s 51 and failed to afford the accused the opportunity to make representations as to why the court must not make such an order, the order cannot be allowed to stand. In view of this, the matter is remitted to the magistrate to explain the implications of the provisions of s 51 and invite the accused to make representations why his driving licence should not be suspended before such an order is made.

[5] In the result, I make the following order:

1. The conviction and sentence are confirmed.
2. The order suspending the accused's driver's licence for three (3) months is set aside.
3. The matter is remitted to the magistrate in terms of section 312 of the Criminal Procedure Act 51 of 1977 to enable the court to explain to the accused the implications of the provisions of s 51 (3) and to invite the accused to make

representations as to why his driver's licence should not be suspended before such an order is made.

NN SHIVUTE
JUDGE

J SALIONGA
ACTING JUDGE