



HIGH COURT OF MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case no: CR 2/2017

In the matter between:

THE STATE

APPLICANT

And

BETHUEL TJIPEUJA

RESPONDENT

Neutral citation: *The State v Tjipeuja (CR 2/2017) [2017] NAHCMD 4 (20 January 2017)*

Coram: NDAUENDAPO, J et SHIVUTE, J

Delivered: 20 January 2017

ORDER

- (1) The conviction and sentence are confirmed.
- (2) The matter is remitted back to the Magistrate who presided over the matter and in his absence, any other Magistrate, in order to re-summon the accused and to comply with the provisions of section 51 (1) of Act 22 of 1999.

JUDGMENT

NDAUENDAPO J (SHIVUTE J concurring):

[1] Before me is a review matter. The accused appeared in the Magistrate's court held at Outjo and charged with contravening section 82(1)(a) read with 86, 89 and 106 of Act 22 of 1999 – driving under the influence of alcohol.

[2] He was sentenced to a fine of N\$4000 or 1 year imprisonment wholly suspended for 3 years on condition that the accused is not convicted of contravening section 82(1) (a) of Act 22 of 1999 - being driving a motor vehicle under the influence of alcohol, committed during the period of suspension.

[3] The licence of the accused was not suspended and I directed a query to the Magistrate as follows:

1. Please explain why the following sections of Act 22 of 1999 (Road Traffic and Transport) were not complied with?

Sections 49 (1) and 51 (1) (c), please clarify the effect of the failure to do so on the conviction.

[4] The Magistrate replied to the query as follows:

'1. *I do concede that I failed to comply with the section 49(1) and 51 (1) (c). It was an oversight and it was a material mistake which will not repeat in future. (sic)*

2. *Non-compliance with section 49 (1) has no effect on the conviction. Section 49 (1) falls under the heading SUSPENSION CANCELLATION AND ENDORSEMENT OF LICENCE, so it appears that section 49 (1) was inserted in order to secure the production of licences from the accused for considerations by the Court when suspending or cancelling the licences after the accused has been convicted.*

3. *Non-compliance with section 51 (1) (c) does not have any effect on the conviction, this is so because this section only comes into operation after the accused has been convicted.*

4. *Since section 51 (1) (c) is peremptory, Justice will be done if the honourable reviewing Judge order me the trial Magistrate to re-summon the accused and thereafter comply with the provisions of section 51 (1) (c).*

[4] After receiving the reply of the Magistrate, it appears that the file and the reply was misplaced when I moved from my previous chambers to my current one and it was only in 2016 that I found the file and the reply of the Magistrate. The provisions of section 51 (1) of Act 22 of 1999 are peremptory and must be complied with. The inordinate delay is regretted.

In the result the following order is made:

- (3) The conviction and sentence are confirmed.
- (4) The matter is remitted back to the Magistrate who presided over the matter and in his absence, any other Magistrate, in order to re-summon the accused and to comply with the provisions of section 51 (1) of Act 22 of 1999.

GN NDAUENDAPO

Judge

N SHIVUTE

Judge