



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case no: CR 89/2018

In the matter between:

THE STATE

v

JURGEN RUSSEL BUSSEL

ACCUSED

(HIGH COURT MAIN DIVISION REVIEW REF NO. 1723/2018)

THE STATE

v

JONA NDAFELAI AND ANOTHER

ACCUSED

(HIGH COURT MAIN DIVISION REVIEW REF NO. 1724/2018)

THE STATE

v

JOHANNES PENDA ANGULA

ACCUSED

(HIGH COURT MAIN DIVISION REVIEW REF NO. 1725/2018)

Neutral citation: *S v Bussel, S v Ndafelai & S v Angula* (CR 89/2018) [2018]
NAHCMD 362 (14 November 2018)

Coram: USIKU J, (UNENGU AJ concurring)

Delivered: 14 November 2018

Flynote: Criminal law – Suspension of driver’s licence upon conviction of certain offences – Such suspension peremptory – Failure to suspend an irregularity.

ORDER

1. The order suspending the suspension of the driver’s licences for a period of five years is set aside.
2. Each accused is to be summoned to appear before court in order to present his driving licence before the trial magistrate, in order for him/her to deal with the cases in accordance to law.

REVIEW JUDGMENT

USIKU J, (Unengu AJ concurring)

[1] This matter has been referred to me by way of special review in terms of section 304 of the Criminal Procedure Act 51 of 1977 (Act 51 of 1977) (CPA) with a letter from the divisional magistrate with the following comments.

[2] “The accused persons were arraigned in the Otjiwarongo Magistrates Court on charges of driving with excessive breath alcohol level in contravention of section 1, 82 (7) 86, 89 (1) and 89 (4) of the Road Traffic and Transportation Act 22 of 1999 each. They were each sentenced to pay fines and their respective driver’s licences suspended for three months each which was suspended for a period of five years. That means that the driving licences were not immediately suspended as required in terms of the Road Traffic and Transportation Act 22 of 1992.”

[3] In terms of that Act, section 51 (1) provides:

‘Where a person who is a holder of a driving licence is convicted by a court of an offence:-

(a) ---

(b) ---

(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).

(2) An order of suspension pursuant to subsection (1), shall be made for such period as the court may determine, but which shall not be less than-

(a) Three months, in the case of a first conviction’.

[4] In all the three cases the accused persons were said to be first offenders each. From the wording of the letter addressed to me by the divisional magistrate, Otjiwarongo, the sentences as well as the suspension of the driver’s licences were suspended for a period of five years.

[5] In the case of a first offender the drivers licence could only be suspended for a period not less than three months therefore, it is irregular and a misdirection for the magistrate to suspend the three months period of suspension.

[6] It was also an irregularity on the part of the magistrate not to have informed the accused persons their rights regarding the suspension of their licences upon conviction and sentence.

[7] The provisions of section 82 (1) (2) (5) and (9) are peremptory. (a) It is respectfully a good practice and it is desirable that the accused persons could have been charged separately for offences relating to the driving of motor vehicle whilst under the influence of alcohol. Nevertheless, there had been no prejudice in the present cases.

[8] In the result the following order is made:

1. The order suspending the suspension of the driver's licences for a period of five years is set aside.
2. Each accused is to be summoned to appear before court in order to present his driving licence before the trial magistrate, in order for him/her to deal with the cases in accordance to law.

D N USIKU
Judge

E P UNENGU
Acting Judge