



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case no.: CR 40/2019

THE STATE

v

KANDJIMI DIOLINDO

(HIGH COURT MAIN DIVISION REVIEW REF NO. 271/2019)
(MAGISTRATE'S SERIAL NUMBER: 02/2018)

Neutral citation: *S v Diolindo* (CR 40/2019) [2019] NAHCMD 163 (23 May 2019)

Coram: NDAUENDAPO J et SHIVUTE J

Delivered: 23 May 2019

Flynote: Section 51(1)(c) of Act 22 of 1999 – Obligatory suspension of licence upon conviction of offence – Accused convicted for contravening s 82 (5) of the Road Traffic and Transportation Act 22 of 1999 for driving with an excessive breath alcohol Magistrate failing to invoke provisions of s 51 (1) properly – Such failure amounts to a misdirection.

ORDER

The conviction and sentence are confirmed. However, it is not necessary to refer the matter back to the magistrate to invoke the provisions of s 51 properly since the accused had already served his sentence a year ago.

REVIEW JUDGMENT

SHIVUTE J, (NDAUENDAPO concurring)

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

[2] He was sentenced to pay a fine of N\$4000 (four thousand Namibia dollars) alternatively in default of payment 12 months' imprisonment. The court is satisfied with the sentence. The magistrate further suspended the accused's driver's license for a period of six months. However, the magistrate did not explain the provisions of s 51 (1) of the Act neither did he give the accused the opportunity to make a representation before his license was suspended.

[3] The matter was referred to me for purposes of review. After perusing the review record I queried the learned magistrate as to why he did not explain the provisions of section 51(1) of the Act before suspending the accused driver's license.

[4] The learned magistrate indicated that he did explain the provisions of s 51 (1) to the accused but that same is not apparent from the record.

[5] Section 51(1) provides that where a person who is the holder of a driving licence is convicted by a court -

'...

(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).'

[6] The provisions of s 51 are obligatory and they must be adhered to without any exception in relation to the provisions of s 82 (5).

[7] It is incumbent for judicial officers' to ensure that the record of proceedings is complete and that it reflects what exactly transpired during trial. The allegation by the learned magistrate that he did allow the accused to make representations as to why his license should not be suspended is not borne out by the record of proceedings and the court is therefore not satisfied.

[8] Although, the learned magistrate failed to invoke the provisions of s 51(1) properly which amounts to a misdirection, the accused was sentenced on 19 January 2018 and he had already served his sentence. It will not be in the interest of justice to remit the matter to the magistrate to apply s 51 (1) of the Act.

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

The conviction and sentence are confirmed. However, it is not necessary to refer the matter back to the magistrate to invoke the provisions of s 51 properly since the accused had already served his sentence a year ago.

NN SHIVUTE
Judge

GN NDAUENDAPO
Judge