



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case no.: CR 41/2019

THE STATE

v

LOURENCIOUS KRONHE

(HIGH COURT MAIN DIVISION REVIEW REF NO. 104/2018)
(MAGISTRATE'S SERIAL NUMBER: 135/2017)

Neutral citation: *S v Kronhe* (CR 41/2019) [2019] NAHCMD 164 (23 May 2019)

Coram: NDAUENDAPO J et SHIVUTE J

Delivered: 23 May 2019

Flynote: Section 51 of the Road Traffic and Transportation Act 22 of 1999 – Obligatory suspension of driving licence upon conviction of certain offences – Accused was convicted of contravening s 82 (1)(a) driving under the influence of intoxicating liquor– 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 – Magistrate committed an irregularity by not invoking the provisions of s 51 of the Act properly.

ORDER

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

REVIEW JUDGMENT

SHIVUTE J, (NDAUENDAPO concurring)

[1] This review record was forwarded to the office of the judiciary on 16 January 2018 and I queried the magistrate on 11 May 2018. From the magistrate's reply it appears that the review record was misplaced and could not be located hence the delayed reply from the magistrate was only received by our office on 6 May 2019. This judgment is merely written for academic purposes because the accused has already served his sentence.

[2] The accused was convicted for contravening s 82 (1)(a) read with s 1, 86, 89, (1) and 89(4) of the Road Traffic and Transportation Act 22 of 1999 for driving under the influence of intoxicating liquor.

[3] He was sentenced to pay a fine of N\$4000 (four thousand Namibia dollars) alternatively in default of payment 8 months' imprisonment. The court is satisfied with the sentence imposed. The magistrate further suspended the accused's driver's license for a period of 3 months.

[4] 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 invoke the provisions of section 51(1) of the Act before suspending the accused's driver's license. In other words why the accused was not given the opportunity to address the court prior to the suspension of his license.

[5] The learned magistrate conceded that he failed to explain the provisions of s 51.

[6] Section 51(1) provides that:

'Where a person who is the 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).'

[7] 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. The provisions of s 51 must first be explained to the accused whereafter he be afforded the opportunity to address the court as to why his driving licence should not be suspended. Furthermore, the learned magistrate failed to explain the provisions of s 51(1) and his failure to do so amounts to an irregularity.

[8] 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 explain the provisions of s 51 since the accused had already served his sentence a year ago.

NN SHIVUTE

Judge

GN NDAUENDAPO

Judge