

**REPUBLIC OF NAMIBIA**

NOT REPORTABLE



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK**

**JUDGMENT**

**CR NO: 12/2019**

In the matter between:

**THE STATE**

v

**LUCAS PANDULENI NAFTAL**

**(HIGH COURT MD REVIEW CASE NO. 1198/2018)**

**(MAGISTRATE'S SERIAL NO.: 28/2018)**

*Neutral citation: S v Naftal (CR 12/2019) [2019] NAHCMD 33 (22 February 2019)*

**CORAM: NDAUENDAPO J et SHIVUTE J**

**DELIVERED: 22 February 2019**

**Flynote:** Incompetent sentence invoked by magistrate – Magistrate must have regard to s 106(7) – Road Traffic and Transportation Act – Magistrate to sentence accused separately on each count – Not taking both counts together for purposes of sentence.

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### ORDER

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(a) The convictions in respect of count 1 and 2 are confirmed.

(b) The sentence imposed in respect of both counts are set aside and substituted with the following sentence:

1st count: N\$ 2000 (two thousand Namibia dollar) fine, in default of payment 6 months imprisonment.

2nd count: N\$ 1000 (one thousand Namibia dollar) fine, or in default of payment 3 months' imprisonment.

(c) The sentence is backdated to 12 February 2018.

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### JUDGMENT

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SHIVUTE J (NDAUENDAPO J concurring)

[1] The accused was arraigned in the Windhoek magistrate's court for contravening Regulation 48(5)(a) displaying a licence number not applicable to the vehicle, of government notice 53 of 2001 read with sections 1, 253, 267 and 369 read with sections 1, 86, 89 and 106 of Act 22 of 1999 on count 1 and contravening section 31(1)(a) read with s 31(2) of the Road Traffic and Transportation Act 22 of 1999, driving without a driver's licence on count 2.

[2] The accused pleaded not guilty in respect of count 1, whereby the court applied s 115 of the Criminal Procedure Act 51 of 1977. He pleaded guilty in respect of count 2 and the court applied s 112(a) of the Act. After the trial, the accused was found guilty on the second count as well. He was sentenced to a fine of N\$ 4000 (four thousand

Namibia dollar) or to 12 months' imprisonment. The magistrate took both counts together for purposes of sentence.

[3] I raised a query with the magistrate in the following terms

'... the two counts were taken together for purpose of sentence and the accused was sentenced to N\$ 4000 fine or 12 months' imprisonment. Is the sentence imposed a competent one?'

[4] The magistrate conceded that the sentence imposed was not a competent one and requested the reviewing court to amend the sentence imposed.

[5] In respect of the sentence imposed by the learned magistrate, it is important to have regard to section 106(7) of the Road Traffic and Transportation Act which deals with the offences and penalties to be imposed, which reads:

'Any person convicted of an offence by virtue of any other provision of this Act shall be liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.'

[6] I have no problem with the conviction however, the sentence imposed cannot be allowed to stand.

[7] In the result, it is ordered that:

(a) The convictions in respect of count 1 and 2 are confirmed.

(b) The sentence imposed in respect of both counts are set aside and substituted with the following sentence:

1<sup>st</sup> count: N\$ 2000 (two thousand Namibia dollar) fine, in default of payment 6 months imprisonment.

2<sup>nd</sup> count: N\$ 1000 (one thousand Namibia dollar) fine, or in default 3 months' imprisonment.

(c) The sentence is backdated to 12 February 2018.

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NN SHIVUTE

JUDGE

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GN NDAUENDAPO

JUDGE