

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK  
REVIEW JUDGMENT

<b>Case Title:</b> <i>The State v Lukas Cornelius Eiseb</i>	<b>High Court Ref</b> <b>Case No:</b> CR 105/2019
	<b>Division of Court:</b> Main Division
<b>Heard before:</b> Honourable Justice Shivute <i>et</i> Honourable Justice Sibeya Acting	<b>Delivered on:</b> 12 December 2019
<b>Neutral citation:</b> <i>S v Eiseb</i> (CR 105/2019) [2019] NAHCMD 547 (12 December 2019)	
<b>The order:</b>  <ol style="list-style-type: none"><li>1. The conviction of contravening section 26(1) is set aside and substituted with the conviction of contravening section 27(1) of the Ordinance for hunting protected game.</li><li>2. The sentence is confirmed but amended to read: A fine of N\$3000 (Three Thousand Namibia Dollars) or 12 (Twelve) months' imprisonment wholly suspended for a period of five (5) years on condition that the accused is not convicted of contravening section 27(1) of Ordinance 4 of 1975 as amended committed during the period of suspension.</li></ol>	

SIBEYA, AJ and SHIVUTE, J (concurring)

[1] This matter was submitted to this court for review in terms of section 302 of the Criminal Procedure Act 51 of 1977 (the CPA).

[2] The accused was charged and convicted of hunting of specially protected game, namely, a duiker in contravention of section 26(1) read with sections 1, 26(2), 26(3), 85, 87, 89 and 89(A) of Ordinance 4 of 1975 (the Ordinance)<sup>1</sup>.

[3] A query was forwarded to the magistrate whether a duiker is a specially protected game and to provide the basis for her response.

[4] The magistrate responded as follows:

‘A duiker is a protected game. Accused should have been charged for contravening section 29 of the Nature Conservation Ordinance 4 of 1975.

The Honourable reviewing (sic) may set aside the conviction and sentence as the accused was convicted on the wrong charge.’

[5] The Ordinance<sup>2</sup> defines a specially protected game as every species of game mentioned in Schedule 3 of the Ordinance. A protected game is defined as every species of game mentioned in schedule 4<sup>3</sup>. A duiker is not amongst the animals listed in Schedule 3 but to the contrary Schedule 4 lists several animals, amongst which, is a duiker.

[6] It follows that a duiker is a protected game and not a specially protected game in

<sup>1</sup> The Nature Conservation Ordinance 4 of 1975.

<sup>2</sup> Section 1 of the Ordinance.

<sup>3</sup> Section 1 of the Ordinance.

terms of the Ordinance. The accused was therefore wrongly charged as he should have been charged for contravening section 27(1)<sup>4</sup>. The magistrate therefore committed a misdirection when she convicted the accused on a wrong charge and the conviction can therefore not be allowed to stand. The magistrate correctly conceded to such misdirection.

[7] This court on review has the authority to amend a charge sheet if the accused person will not be prejudiced thereby, as stated in *S v Karenga*<sup>5</sup>. *In casu*, the accused admitted all the elements of the offence of hunting a duiker as provided for in section 27(1) of the Ordinance and no prejudice is envisaged to be suffered by the accused if the charge sheet is amended.

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

1. The conviction of contravening section 26(1) is set aside and substituted with the conviction of contravening section 27(1) of the Ordinance for hunting protected game.
2. The sentence is confirmed but amended to read: A fine of N\$3000 (Three Thousand Namibia Dollars) or 12 (Twelve) months' imprisonment wholly suspended for a period of five (5) years on condition that the accused is not convicted of contravening section 27(1) of Ordinance 4 of 1975 as amended committed during the period of suspension.

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<sup>4</sup> The Ordinance.

<sup>5</sup> 2007 (1) NR 135 (HC) para 6.

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