

“ANNEXURE 11”

Case Title: <i>The State v Asser Mweulinale</i>	Case No: CR 44/2020
High Court MD Review No: 806/2020	Division of Court: Main Division
Heard before: Shivute J et Claasen J	Delivered on: 25 June 2020
Neutral citation: <i>S v Mweulinale</i> (CR 44/2020) [2020] NAHCMD 252 (25 June 2020)	
The order: <ul style="list-style-type: none">a) The accused’s admission of guilt in terms of section 57 of the Criminal Procedure Act made on 21 January 2020 is set aside.b) The entering of the particulars prescribed in section 57(6) of the Criminal Procedure Act by the clerk of court is set aside and expunged from the criminal record book.c) The clerk of court shall refund the amount of N\$ 1000-00 to the accused which was paid as fine to written notice serial number 043013 on 21 January 2020 as soon as possible.	
Reasons for order:	
Claasen J (concurring Shivute J) <ul style="list-style-type: none">1. This case is before us not in the ordinary course of review, but in terms of section 304(4) of the Criminal Procedure Act as amended (hereafter referred to as CPA). It was referred to this Court by the Divisional Magistrate of Windhoek Central Division with a recommendation that the admission of guilt be set aside and the fine be refunded to the accused.2. The bundle that was placed before the review court comprised of the original written notice issued to the accused, an affidavit by the accused, a letter by the Divisional Magistrate, a letter by the	

Head of Office of the Windhoek Magistrates' Court, a letter by the Additional Magistrate who checked the admission of guilt and a general receipt issued to the Katutura Police Station.

3. At the outset I must state that the narrative deposed to by Mr Mweulinale is not clear in all respects. I will endeavour to set out the essential parts. He was arrested on 20 January 2020 by a certain police officer along the B1 western by-pass road in Windhoek for allegedly failing to stop his vehicle when directed to stop by a police officer. Later that evening at Katutura Police Station, a case was opened for reckless, negligent driving and defeating the course of justice. The said official also informed Mr Mweulinale to prepare N\$ 1000-00 if he does not want to sleep in jail, but it was too late and he spent the night at Katutura Police Station.
4. The next day Mr Mweulinale contacted a friend who brought N\$ 1000-00. He stated that 'At 15h00 on 21/01/2020 they took me to a finger print and he told me to prepare N\$ 1000-00 to pay in order to release me.' (sic) Subsequently he was told that the case ends there because he paid an admission of guilt fine.
5. The gist of the grievance is that Mr Mweulinale did not comprehend or agree that the N\$ 1000-00 constituted payment for an admission of guilt for the offense and that he wants to go to court to clear his name.
6. The Additional Magistrate explains in her letter that she checked the particular written notice and in that way fulfilled her duty. It emanated from Head of Office's letter that he formed the opinion that the Police Officer disguised the bail money as a court fine and that he requested the Divisional Magistrate to refer the case for a special review. The Divisional Magistrate complied with that request. It appears that there was no written representation by the accused that could have been considered by the Additional Magistrate at the time of checking the documents.
7. An inspection of the charge as set out in the written notice serial number 043013 reveals that it is defective. The name of the offense reads 'Reckless, Negligent driving & Defeating the course of Justice,' whereas the particulars of the charge state that on 20/01/2020 at or near Katutura B1 road, Western bypass in the said district the suspect failed to stop his vehicle when stopped by the police officer executing his duty in uniform.

8. Section 84(1) of the CPA provides that a charge shall set out an offense in such a manner that the accused is sufficiently informed on the nature of the charge.
9. In the written notice before us, the specific offense with which Mr Mweulinale was charged is all but clear, as it combines several different offenses in one offense. As far as reckless and negligent driving is concerned, though they are charged under the same provision i.e. contravening section 80(1) of Act 22 of 1999, (hereafter referred to as the Act) they differ as the blameworthiness that is attributed to reckless driving is higher than that of negligent driving. Furthermore in the Uniform Traffic Fine List approved for the District of Windhoek,¹ the offenses of Reckless or Negligent Driving are indicated as offenses for which an admission of guilt fine ought not to be given.
10. In the case of statutory offenses, it is required to cite the particular provisions of the legislation, which was not done in the written notice at hand. Had the police officer contemplated the traffic offense to be that of failed to stop in compliance with any direction conveyed by a road traffic sign or direction by a traffic officer in uniform, he/she should have included that the offense was a contravention of Regulation 340(a) read with Regulation 369 and section 1, 86 and 89 of the Act.
11. In looking at the charge as formulated on the written notice the accused could not have pleaded guilty to the defective charge. Therefore, the magistrate when checking the written notice in terms of section 57(7) of the CPA should not have found that the conviction was in order and should not have confirmed it.
12. In the result the following order is made:
 - a) The accused's admission of guilt in terms of section 57 of the Criminal Procedure Act made on 21 January 2020 is set aside.
 - b) The entering of the particulars prescribed in section 57(6) of the Criminal Procedure Act by the clerk of court is set aside and expunged from the criminal record book.
 - c) The clerk of court shall refund the amount of N\$ 1000-00 to the accused which was paid as fine to written notice serial number 043013 on 21 January 2020 as soon as possible.

¹ Page 107 of Uniform Traffic Fine List Namibia

C M CLAASEN JUDGE	N N SHIVUTE JUDGE