

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case Title: <i>The State v Thomas Lingandu</i>	Case No: CR 4/2021
High Court MD Review No: 1542/2020	Division of Court: Main Division
Heard before: Mrs Justice Shivute <i>et</i> Mr Justice Sibeya	Delivered on: 28 January 2021
Neutral citation: <i>S v Lingandu</i> (CR 4/2021) [2021] NAHCMD 12 (28 January 2021)	
The order: <ul style="list-style-type: none">a. The conviction is confirmed.b. The sentence is set aside and substituted for: N\$ 2000 or in default of payment, 6 months' imprisonment.c. If the accused paid a fine of N\$ 2500, the amount of N\$ 500 should be refunded to him.d. The sentence is antedated to 2 June 2020.	
Reasons for order:	
Shivute J (concurring Sibeya J) <ul style="list-style-type: none">1. This is a review in terms of s 302(1) of the Criminal Procedure Act 51 of 1977 (the Act).	

2. The accused was charged in the magistrate's court for the district of Rundu, on a count of failing to comply with the direction of a road traffic sign, contravening section 75 read with sections 1,74,86,89 and 106 of the Road Traffic and Transportation Act 22 of 1999.
3. He was subsequently found guilty as charged and sentenced to a fine of N\$ 2500 or in default of payment, 8 months' imprisonment.
4. The conviction is in order and shall be confirmed. However, the issue lies with the sentence.
5. On review, I queried the learned magistrate as to whether the sentence was permissible. In reply , she stated the following :

'1. The sentence imposed is impermissible because section 75 read with section 106 (5) (c) provides for the fine not exceeding N\$ 2000- 00.

2. It is therefore recommended that a fine of N\$ 2000-00 alternatively four (4) months imprisonment substitutes the current sentence.'

6. Section 106(5)(c) of the Road Traffic and Transport Act ¹ provides that:

'(c) where it is proved that he or she has failed to comply with paragraph (e) or (g) of that section, 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.'

7. It follows that, the court *a quo* exceeded its sentencing powers by sentencing the accused to a period which is in excess of the statutory prescribed limit. The concession by the learned magistrate was therefore properly made.
8. In the premises, the sentence imposed is not in accordance with law and stands to be set aside.

¹Road Traffic and Transport Act 22 of 1999

9. These review proceedings are merely for academic purposes given that the accused has already served his sentence.

10. In the result, it is ordered that:

- a. The conviction is confirmed.
- b. The sentence is set aside and substituted for: N\$ 2000 or in default of payment, 6 months' imprisonment.
- c. If the accused paid a fine of N\$ 2500, the amount of N\$ 500 should be refunded to him.
- d. The sentence is antedated to 2 June 2020.

NN SHIVUTE JUDGE	O S SIBEYA JUDGE