

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

SPECIAL REVIEW JUDGMENT

Case Title: <i>The State v Kayombo Joe Chinyemba</i>	Case No: CR 29/2021
High Court MD Review No: 741/2021	Division of Court: Main Division
Special review: Lady Justice Dinah Usiku	Delivered on: 23 April 2021
Neutral citation: <i>S v Chinyemba</i> (CR 29/2021) [2021] NAHCMD 185 (23 April 2021)	
The order: (a) The conviction and sentence are confirmed. (b) The order suspending the accused's driver's license for a period of 3 months is set aside and is substituted with an order declaring the accused to be disqualified from obtaining a learner's license or driving license for a period of 3 months. (c) The order is ante dated to the 12 April 2021.	

Reasons for order:

USIKU J (concurring SALIONGA J)

[1] This matter has been sent on a special review by the district court magistrate Katima Mulilo who presided over the matter.

[2] Review procedures are governed by s 304 (4) of the Criminal Procedure Act 51 of 1977.

[3] The accused person was charged with the offence of contravening s 80 (1) of Act 22 of 1999 read with ss 1, 30 (3) 86, 106 (1) and 106 (6) of the Road Traffic and Transportation Act 22 of 1999. The accused pleaded guilty to the charge of reckless driving whereafter the matter was finalised in terms of s 112 (1) (b) of the Criminal Procedure Act 51 of 1977.

[4] The Court having satisfied itself found the accused guilty as charged whereafter the accused was sentenced to pay a fine of N\$4000,00 or in default 10 months imprisonment. I have no qualm with both conviction and the sentence imposed.

[5] Having sentenced the accused, the Court thereafter proceeded to have the accused's driver's license suspended in terms of s 51 (1) (b) of the Act and the matter was then finalized.

[6] However, on the 14 April 2021, the accused unexpectedly appeared before court and in person, was questioned by the magistrate why he was before court. His explanation was that he was appearing before court because of the licence he had referred to have held whilst in fact he was not a holder of a driver's licence at all.

[7] The explanation preferred gave the magistrate the reason to question the accused whether he had informed the court that he was a holder of a driver's license to which the accused responded in the negative stating that in his life time it was his first time to appear before a court of law and hence fore, was afraid.

[8] Having ascertained whether the accused indeed was the holder of a driver's license he was afforded an opportunity to explain to the court why his driver's license should not be suspended. It then turned out that the accused was not a holder of a driver's license. It was on that basis that the matter was referred to this court on special review by learned magistrate.

[9] As alluded to special reviews are governed by s 304 (4) of the Criminal Procedure Act 51 of 1977 which provides:

'If in any criminal case in which a magistrate's court has imposed a sentence which is not subject to review in the ordinary course in terms of s 302 or in which a regional court has imposed any sentence, it is brought to the notice of the provincial division having jurisdiction or any judge thereof that the proceedings in which the sentence was imposed were not in accordance with justice, such court or judge shall have the same powers in respect of such proceedings as if the record thereof had been laid before such court or judge in terms of s 303 or this section.'

[10] On the other hand in terms of the Road Traffic and Transportation Act 22 of 1999 s 51 (1) provides that the court shall apart from imposing a sentence and except if the court under s 50 (1) (a) issue an order for the cancellation of a licence, issue an order whereby every driving licence held by such person is suspended in accordance with the provisions of ss (2).

[11] In the present case the accused in fact is not a holder of a driver's licence and as such the provisions of s 50 (1) could not be have been invoked but the court had the powers in terms of s 51 (3) to declare the accused to be disqualified from obtaining a learner's licence or drivers licence for a specific period of time after

having been afforded the opportunity to explain why such an order should be made. The period not being less than the minimum period contemplated in paragraph (a) (b) or (c) of ss 2 of the Act.

[12] In the premises, the following orders are made:

- (a) The conviction and sentence are confirmed.
- (b) The order suspending the accused's driver's license for a period of 3 months is set aside and is substituted with an order declaring the accused to be disqualified from obtaining a learner's license or driving license for a period of 3 months.
- (c) The order is ante dated to the 12 April 2021.

Judges Signature:	
D USIKU JUDGE	J T SALIONGA JUDGE