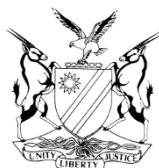


REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case Title: <i>State v Kamakende Immanuel Ihemba</i>	Case No: CR/ 14/2021
High Court MD Review No: 1915/2020	Division of Court: Main Division
Heard before: Judge Claasen et Judge Usiku	Delivered on: 26 February 2021
Neutral citation: <i>S v Ihemba</i> (CR 14 /2021) [2021] NAHCMD 80 (26 February 2021)	
The order: <ol style="list-style-type: none">1. The convictions are confirmed.2. The sentence for failure to appear at court after being released on warning is confirmed.3. The sentence for the contravention of section 58(1) of Act 22 of 1999 is set aside and is substituted as follows: Accused to pay a fine of N\$ 2000 or 3 months' imprisonment. The sentence is antedated to 10 September 2020.	
Reasons for order:	

Claasen J (concurring Usiku J)

- [1] The matter appeared on automatic review. The accused appeared in the district court, of Rundu on a traffic offence, namely a contravention of s 58(1) of Act 22 of 1999 (the Act). The offence prescribed by the provision consists of driving a motor vehicle that is not in a roadworthy condition.
- [2] Subsequently the matter was remanded a few times due to a full court roll and the accused was released on warning. He failed to attend court on one of the subsequent appearances. An arrest warrant was issued and he reported himself after two weeks. A summary enquiry ensued, the court did not accept his explanation as reasonable and the accused was sentenced for failure to attend court.
- [3] In respect of the traffic offence the accused pleaded guilty. The court applied s 112(1)(a) of the Criminal Procedure Act (the CPA) and sentenced the accused to a fine of N\$ 2000.00 or 6 months' imprisonment. In mitigation the accused stated that he is unemployed, that his wife suffers from periodical madness and a custodial sentence will cause hardship on the family.
- [4] The prosecutor proposed a fine of N\$ 2000 or 6 months imprisonment. In sentencing, the *court a quo* referred to the personal circumstances of the accused, that he did not tell the court he was sorry, nor did he tell the court why he drove with that vehicle and that the offence is a serious offence.
- [5] The reviewing court posed questions to the *court a quo*, who in her reply was able to put to rest most of the issues. That is with the exception of the heavy imprisonment term that was imposed as an alternative to the fine. The *court a quo* conceded to that aspect.
- [6] It has been stated numerous times that s 112(1)(a) of the CPA is intended for the swift disposal of minor offences. See *S v Onesmus and Others* (CR 08/2011)[2011] NAHC 108 (30 March 2011), *S v Michael* (CR 1/2017) [2017] NAHCNLD 577 (3 March 2017). Thus, it is not appropriate to treat the matter as a 'minor offense' during the plea stage, by electing to invoke s 112(1)(a) of the CPA, but minutes later when it comes to sentencing, the court pronounce it to be a 'serious offence' and a lengthy term of imprisonment is imposed as an alternative to the fine. A heavy term of imprisonment is incompatible with the nature of the provision. See *S v Nyumba* (CR 31/2019) [2019] NAHCMD 97 (12

[7] For these reasons the order is as follows:

1. The convictions are confirmed.
2. The sentence for failure to appear at court after being released on warning is confirmed.
3. The sentence for the contravention of section 58(1) of Act 22 of 1999 is set aside and is substituted as follows: Accused to pay a fine of N\$ 2000; or 3 months' imprisonment.
The sentence is antedated to 10 September 2020.

C CLAASEN JUDGE	D N USIKU JUDGE