

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

PRACTICE DIRECTIVE 61

Case Title: <i>The State v Kambini Ephraim</i>	Case No: CR 2/2023
High Court MD Review No: 1896/2022	Division of Court: High Court, Main Division
Coram: Liebenberg J <i>et</i> Claasen J	Delivered on: 6 February 2023
Neutral citation: <i>S v Ephraim</i> (CR 2/2023) [2023] NAHCMD 30 (6 February 2023)	
ORDER: 1. The conviction and sentence are confirmed. 2. The forfeiture declaration is set aside. 3. The matter is remitted to the court <i>a quo</i> with a direction to hold an enquiry in terms of s 108 of the Road Traffic and Transportation Act 22 of 1999.	
REASONS FOR ORDERS:	

LIEBENBERG J (CLAASEN J concurring):

[1] The unrepresented accused appeared in the magistrate's court for the district of Katima Mulilo on one count of operating a vehicle whilst the permissible axle unit mass is exceeded. He was convicted on his plea of guilty and sentenced to pay a fine of N\$ 6000 or to 6 (six) months' imprisonment. In addition the court made a forfeiture order to the effect that the copper weighing 2,560 kg is forfeited to the state in terms of s 108 of the Road Traffic and Transportation Act 22 of 1999 (the Act).

[2] I directed a query to the magistrate as regards what satisfied the court that the proviso in s 108 of the Road Traffic and Transportation Act had been met as regards the rights of the owner to the load (copper). Suffice to say the magistrate failed to provide a sufficient explanation to the query.

[3] Section 108 of the Act provides:

Forfeiture

'108. (1) The court convicting a person of an offence by virtue of any provision of this Act or the regulations referred to in section 107(2) may, without notice to any person, declare a vehicle or its load or both which was or were used in the commission of the offence and which was or were seized under that section, or the convicted person's rights in such vehicle or load or both, to be forfeited to the State: Provided that such declaration shall not affect any right which any person other than the convicted person may have to the vehicle or load or both, if that other person did not know that the vehicle or its load or both was or were being used or would be used in the commission of the offence concerned or could not prevent such use.

(2) Section 35 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall mutatis mutandis apply with reference to any forfeiture under subsection (1), and in such application the expression "weapon, instrument, vehicle, container or other article" in that section shall be construed as "vehicle or its load or both". (Emphasis provided)

[4] The proviso in s 108 requires that the court holds an enquiry as regards the rights of the owner of the load (copper). This was unfortunately not done during the court's questioning. Hence the court could not have been satisfied that the proviso of s 108 was met.

[5] In the result it is ordered:

1. The conviction and sentence are confirmed.
2. The forfeiture declaration is set aside.
3. The matter is remitted in terms to the court *a quo* with a direction to hold an enquiry in terms of s 108 of the Road Traffic and Transportation Act 22 of 1999.

J C LIEBENBERG
JUDGE

C CLAASEN
JUDGE