



**HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI
REVIEW JUDGMENT**

Case no CR: 3/2017

In the matter between:

THE STATE

and

SEM SHAFI IIPUMBU

ACCUSED

HIGH COURT NLD REVIEW CASE REF NO: 255/2013

Neutral citation: *S v Iipumbu* (CR 3/2017) [2017] NAHCNLD 32 (11 April 2017)

Coram: TOMMASI, J et JANUARY, J

Delivered: 11 April 2017

Flynote: Criminal procedure – charged with having contravened the wrong section. – Prosecutors using wrong pro-forma charge sheet – Accused pleaded guilty to having contravened the correct section – There would be no prejudice to the accused if he is convicted of the offence he pleaded guilty to.

ORDER

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1. The convictions and sentences in respect of count 1 and 4 are confirmed.
 2. The conviction in respect of count 3 is substituted with a conviction in terms of section 31(1)(a) and the sentence imposed in respect of count 3, is confirmed.
 3. The Registrar is directed to bring the contents of paragraph 4 of this judgment to the attention of the Prosecutor-General.
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REVIEW JUDGMENT

TOMMASI, J (JANUARY, J CONCURRING)

[1] This is a review matter. The accused was convicted of having contravened sections 14 (1)(e) (count 1), 30(1) (count 3) and 20(2) (count 4) of the Road Traffic and Transportation Act, 1999 (Act 22 of 1999).

[2] The convictions in respect of count 1 and 4 are in order and may be confirmed. The accused however ought to have been convicted of having contravened section 31(1)(a) in count 3 and not section 30(1) of the Act.

[3] Section 30 (1) relates to the designation of any person or authority or organization as an inspectorate whereas section 31 (1)(a) creates a prohibition for any person to drive a vehicle without a valid license. The accused was thus convicted of having contravened a section that does not create an offence.

[4] The charge sheet is a pro-forma form and it is likely that this particular form is still being used by the prosecutor for the district court of Oshakati. This would mean that this mistake may be repeated for as long as this pro-forma charge sheet remains unchanged. The Prosecutor-General ought to correct this form to avoid further errors. Judicial officers are reminded to be vigilant when an unrepresented accused is charged with a statutory offence to ensure that they are charged with and convicted of the correct offence.

[5] The particulars however is that of a contravention of section 31(1)(a) and it is clear that this is a typographical error.

[6] The accused pleaded guilty to this charge and admitted having driven a motor vehicle on a public road without a driver's license i.e. he admitted all the elements of having contravened section 31(1)(a). The accused, under these circumstances, would not suffer prejudice if this court convicts him of the offence he pleaded guilty to.

[7] The learned magistrate, when sentencing the accused, labored under the impression that he was sentencing the accused for having contravened section 31(1)(a). There is therefore no reason for this court to interfere with the sentence and it may be confirmed.

In the circumstances, the conviction in respect of count 2 is therefore not in accordance with justice and stands to be set aside.

[8] In the result the following order is made:

1. The convictions and sentences in respect of count 1 and 4 are confirmed.
2. The conviction in respect of count 3 is substituted with a conviction in terms of section 31(1)(a) and the sentence imposed in respect of count 3, is confirmed.
3. The Registrar is directed to bring the contents of paragraph 4 of this judgment to the attention of the Prosecutor-General.

M A TOMMASI
JUDGE

H C JANUARY
JUDGE9