



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI

REVIEW JUDGMENT

Case no CR:12 /2017

In the matter between:

THE STATE

and

SAKEUS NGHITANWA

ACCUSED

HIGH COURT NLD REVIEW CASE REF NO: 43/2017

Neutral citation: *S v Nghitanwa* (CR12 /2017) [2017] NAHCNLD 78 (10 August 2017)

Coram: TOMMASI J and JANUARY J

Delivered: 10 August 2017

Flynote: Review — Criminal law — Traffic offences — Negligent driving — Plea accepted in terms of s 112 (a) — Not a minor offence — Court however to infer that

the two counts are closely related — Conviction of both negligent driving and having contravened s 82(5) of the Road Traffic and Transportation Act, 1999 (Act 22 of 1999) amounts to a duplication of convictions — Conviction of negligent driving set aside.

ORDER

1. The conviction of contravening s 80(1) of the Road Traffic and Transportation Act, 1999 (Act 22 of 1999) and the resultant sentence are set aside;
2. The conviction of contravening s 82(5) of the Road Traffic and Transportation Act, 1999 (Act 22 of 1999) and the sentence imposed pursuant to that conviction are confirmed.
3. Any fine paid pursuant to the sentence imposed in respect of count 1 should be refunded.

REVIEW JUDGMENT

TOMMASI J (JANUARY J concurring):

[1] This is a review matter. The accused was convicted of contravening s 80 (1) of the Road Traffic and Transportation Act, 1999 (Act 22 of 1999) (negligent driving and contravening s 82 (5) of the same act (driving while the concentration of alcohol in any specimen of breath exhaled exceeds .037 mg / 1000 ml). He was sentenced to pay a fine of N\$1500 or 90 days imprisonment in respect of the first count and N\$2500 or 6 months imprisonment in respect of the second count.

[2] The accused pleaded guilty to both counts and was convicted of negligent driving in terms of s 112 (1)(a) and convicted after having been questioned in terms of s 112 (1)(b) of the Criminal Procedure Act in respect of the second count.

[3] The offences were committed on the same day and at the same place. The likelihood is that the excessive alcohol consumption impacted the accused's ability to drive skillfully. In *S v Nekongo* 2001 NR 96 (HC) the court held that the convictions (negligent driving and driving under the influence of alcohol) amounted to an unnecessary duplication of charges; that the two crimes were closely related and the negligent driving was affected by the fact that the accused had been under the influence of intoxicating liquor. Maritz J, as he then was, at page 98 F – G of this judgment, stated as follows:

'The South African Courts have generally reasoned along similar lines: In *R v Roopsingh* 1956 (4) SA 509 (A) at 518F Hall AJA remarked:

"To drive a motor vehicle when the driver's faculties are impaired through his having consumed intoxicating liquor appears to me to be in itself a form of recklessness, for how often has experience not shown that the intoxicated driver is the harbinger of disaster, and even of death, for innocent users of the highway".

[4] The difficulty herein is that the accused was convicted in terms of section 112 (1) (a) for negligent driving. It is my considered view that this matter should not have been disposed of in terms of s 112 (1)(a). It is conceivable that the degree of negligence may be slight but this would not be so in all cases. The judicial officer should apply his/her mind to each case to determine whether or not it would be prudent to dispose of the case in terms of s 112 (1) (a). (See *S v Onesmus*; *S v Amukoto*; *S v Mweshipange* 2011 (2) NR 461 (HC) where the court held that only relatively minor offences should be dealt with under s 112 (1)(a).).

[5] In *S v Nekongo, supra*, the court held that, although it was difficult to envisage a situation where these two convictions would not amount to a duplication of charges, each case had to be considered on its own merits. The accused admitted that his specimen of breath exhaled was 077 milligrams per 1 000 milliliters. It would not be unreasonable to infer, given the fact that the two incidences are closely related, that the accused's state of inebriation contributed to his inability to drive the vehicle skillfully or diligently. A conviction on both these two charges would, in my view, amount to a duplication of convictions.

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

1. The conviction of contravening s 80(1) of the Road Traffic and Transportation Act, 1999 (Act 22 of 1999) and the resultant sentence are set aside;
2. The conviction of contravening s 82(5) of the Road Traffic and Transportation Act, 1999 (Act 22 of 1999) and the sentence imposed pursuant to that conviction are confirmed.
3. Any fine paid pursuant to the sentence imposed in respect of count 1 should be refunded.

M A TOMMASI
JUDGE

I agree

H C JANUARY
JUDGE