

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION, OSHAKATI

REVIEW JUDGMENT

Case Title: <i>The State v Epafrans Ndeulita</i>	CR No.: 49/2019 Case No: 714/2019
	Division of Court: Northern Local Division
Heard before: Honourable Mr. Justice January J <i>et</i> Honourable Ms. Justice Salionga J	Delivered on: 27 December 2019
Neutral citation: <i>S v Ndeulita</i> (CR 49/2019) [2019] NAHCNLD 148 (27 December 2019)	
The order: <ol style="list-style-type: none">1. The conviction of contravening section 82(1) (a) read with sections 1, 86, 89(1) and 89(4) of the Road Traffic and Transportation Act, Act 22 of 1999 – Driving with an excessive blood-alcohol level is set aside and substituted with a conviction of section 82(5) read with sections 1, 86, 89(1) and 89(4) of the Road Traffic and Transportation Act, Act 22 of 1999.2. The sentence of N\$4000 or eight months imprisonment plus a further eight months imprisonment wholly suspended for a period of five years on condition that the accused is not convicted of driving under the influence of intoxicating liquor, c/s 82(1) Act 22 of 1999, driving with excessive breath or blood alcohol level in C/S 82(2) and	

82(5), of Act 22 of 1999 committed during the period of suspension is set aside; and substituted with:

N\$4000 or eight months imprisonment plus a further eight months imprisonment wholly suspended for five years on condition that the accused is not convicted of a contravention of sections 82(1), 82(2) or 82(5) of Act 22 of 1999; 82(1)-Driving under the influence of intoxicating liquor or a drug having a narcotic effect, 82(2) - Driving with an excessive blood/alcohol level or 82(5)-Driving with an excessive blood/breathalyser level committed during the period of suspension.

Reasons for the order:

JANUARY J (SALIONGA J concurring):

[1] The accused was charged with the wrong section of the Road Traffic and Transportation Act, Act 22 of 1999. Section 82(1) (b) relates to driving under the influence of intoxicating liquor or a drug having a narcotic effect and not driving with an excessive blood-alcohol level.

[2] As a general rule, an accused should not be allowed to escape conviction only as a result of the prosecution's attachment of an incorrect 'label' to a statutory offence or an erroneous reference to the applicable statutory provision which has allegedly been contravened.

'(The) principle is that, if the body of the charge is clear and unambiguous in its description of the act alleged against the accused, e.g., where the offence is a statutory and not a common-law offence and the offence is correctly described in the actual terms of the statute, the attaching of a wrong label to the offence or an error made in quoting in the charge the statute or statutory regulation alleged to have been contravened, may be regarded as an error not fatal to the charge. Hence, in circumstances such as those, an error of that nature may be corrected on review, if the Court is satisfied that the conviction is in accordance with justice, or, on appeal, if it is satisfied that no failure of justice has, in fact, resulted therefrom.' (Per Henochsberg J in R v Ngcobo; R v Sibega

1957 (1) SA 377 (N) at 381B - D.) ¹	
H C JANUARY JUDGE	J T SALIONGA JUDGE

¹ S v Somses 1999 NR 296 (HC) at 297 F-G