

REPUBLIC OF NAMIBIA



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

REVIEW JUDGMENT

Case Title: <i>The State v Mukuurunge Ngombe</i>	Case No.: CR 46/2022 Opuwo: OPU-CRM-598/2017
	Division of Court: Northern Local Division
Heard before: Honourable Mr. Justice Small AJ <i>et</i> Honourable Mr. Justice Munsu AJ	Delivered on: 26 September 2022
Neutral citation: <i>S v Ngombe</i> (CR 46/2022) [2022] NAHCNLD 95 (26 September 2022)	
The order: <ol style="list-style-type: none">1. The conviction and sentence are confirmed.2. The matter is remitted back to the Magistrate's Court of Opuwo to re-summon the accused and for the Magistrate to comply with the provisions of section 51(3) of the Road Traffic and Transport Act 22 of 1999.	
Reasons for the order:	
Small AJ (Munsu AJ concurring):	
[1] The matter came before this court on automatic review in terms of section 302 of Act	

51 of 1977.

[2] The accused was arraigned and convicted after his guilty plea and questioning in terms of section 112(1)(b) of the Criminal Procedure Act 51 of 1977 of contravening section 82(2) read with section 1, 86, 89(1) and 89(4) of the Road Traffic and Transport Act 22 of 1999- Driving with an excessive blood alcohol level.

[3] He was sentenced to Six Thousand Namibian Dollars (N\$6 000.00) or Two (2) years imprisonment of which Two Thousand Namibian Dollars (N\$2 000.00) or Six months imprisonment is suspended for a period of Five (5) years on condition that the accused is not convicted of driving with and excessive blood alcohol level in contravention of section 82(2) read with sections 1, 86, 89(4) of Act 22 of 1999 committed within the period of suspension.

[4] Upon perusal of the record, the reviewing Judge, Munsu AJ, directed the following query to the magistrate: 'Subsequent to the accused's conviction and sentence, should the court not have proceeded further to act in terms of section 51 of the Road Traffic and Transport Act 22 of 1999? What is the reason the said section was not applied?'

[5] The leaned magistrate replied conceding that he should have applied the aforesaid section, indicated that he unfortunately did so due to an oversight and indicated that he stands to be guided by the Honourable Judge regarding the available remedies.

[6] Section 51 of the Road Traffic and Transport Act 22 of 1999 provides that where the driver is a holder of a driving licence is convicted under section 78(1)(a), (b) or (c) in the case of an accident which resulted in the death or injury of a person; under section 80(1) of driving a vehicle recklessly; or under section 82(1), (2), (5) or (9), the court shall, apart from imposing a sentence and except if the court under section 50(1)(a) issues an order for the cancellation of the licence, issue an order whereby every driving licence held by such person is suspended such period as the court may determine, but which shall not be less than-

- (a) three months, in the case of a first conviction;
- (b) one year, in the case of a second conviction; and
- (c) five years, in the case of a third or subsequent conviction.

If a person convicted of an offence mentioned is not the holder of a driving licence, the court, apart from imposing a sentence, shall declare such person to be disqualified from obtaining a learner's licence or driving licence for such period as the court may determine, but not being less than-

- (a) three months, in the case of a first conviction;
- (b) one year, in the case of a second conviction; and
- (c) five years, in the case of a third or subsequent conviction

[7] It is apparent from the record, that the accused had no driver's licence and thus the appropriate avenue in this matter was for the magistrate to apply Section 51(3) of Act 22 of 1999¹. The said provision is peremptory and must be complied with. It is well established by our courts that the accused and the State should be given an opportunity to address the court before the section is applied.²

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

1. The conviction and sentence are confirmed.
2. The matter is remitted back to the Magistrate's Court of Opuwo to re-summon the accused and for the Magistrate to comply with the provisions of section 51(3) of the Road Traffic and Transport Act 22 of 1999.

Judge(s) signature:	Comments:
SMALL AJ:	
MUNSU AJ:	

¹ See *S v Chinyemba* (CR 29/2021) [2021] NAHCMD 185 (23 April 2021); *S v Haixuna* (CR 48/2017) [2017] NAHCMD 219 (11 August 2017).

² *The State v Tjipeuja* (CR 2/2017) [2017] NAHCMD 4 (20 January 2017).