

THE STATE V LUKAS ALWEENDO

CASE NO. CR 30/2000

2000/04/14 Silungwe, J. *et*

Maritz, J.

CRIMINAL PROCEDURE

S.304(4) of CPA - special review - accused charged under s. 143(1) of Road Traffic Ordinance, 1967 - substance of charge does not relate to that section - evidence not supportive of conviction under that section - conviction set aside

CASE NO. CR 30&J00

IN THE HIGH COURT OF NAMIBIA

In the matter

between:

THE STATE

versus

LUKAS ALWEENDO

(HIGH COURT REVIEW CASE NO. 2794/99)

CORAM: SILUNGWE, J. *et* MARITZ, J.

Delivered on: 2000 - 04. — 14 if.

SPECIAL REVIEW JUDGMENT:

MARITZ,J.: The Magistrate, Tsumeb submitted the record of the proceedings in this case on special review with an accompanying request to set aside the accused's conviction on a charge of having contravened section 143(1) of the Road Traffic Ordinance, 1967.

That section reads as follows:

- "143. (1) Any person who -
- (a) falsifies or counterfeits or, with intent to deceive, substitutes, alters, defaces or mutilates or adds anything to a registration number or a registration mark or a similar number or mark issued by a competent authority outside the Territory of South West Africa; or
 - (b) is found in possession of such number or mark which has been falsified or counterfeited or so substituted, altered, defaced or mutilated or to which anything has been so added,
- shall be guilty of an offence."

If, however, one is to consider the manner in which the charge against the accused has been formulated, it is apparent that the contravention the State had in mind fell outside the scope of section 143(1) of Ordinance 30 of 1967. The relevant part of the charge reads as follows:

"... that upon or about 10h05 on the day of 19/10/1999 on a public road to wit Hage Geingob Drive, Tsumeb in the said district you did wrongfully and unlawfully operated a red and yellow Toyota Dyno Reg. Nr. 001 INT (a dealer's licence) and misusing the dealer's licence."

The evidence adduced by the State was that the accused, an employee of Punyu Crushers, had

previously been served with a notice suspending the use of the motor vehicle in question until such time it had again been tested and certified for roadworthiness. That notice notwithstanding, the accused was again found driving that vehicle on a public road - then fitted with a registration mark issued under a motor vehicle dealer's licence to Punyu Toyota. According to the accused he reported the earlier suspension of the use of that vehicle to this employer who, instead of preparing and presenting the vehicle for a roadworthy test, simply furnished him with the vehicle dealer's registration marks and instructed him to carry on driving the vehicle.

Although the accused and his employer might have contravened one or more of the other provisions of Ordinance 30 of 1967 (see for instance section 54 or section 4 thereof), the allegations made in the charge and the evidence adduced before the Magistrate are not supportive of a contravention of section 143(1) of that Ordinance. There is no allegation in the charge or evidence to the effect that the accused has falsified, counterfeited, substituted, altered, defaced, mutilated or added anything to the registration mark of the vehicle or that the registration mark in question had been issued by an authority outside Namibia.

The Magistrate acted properly when, after having realised that the accused should not have been charged with a contravention of section 143(1) or convicted thereon, he submitted the record of the proceedings on special review and requested the conviction to be set aside.

In the premises the following order is made:

The accused's conviction of a contravention of section 143(1) of Ordinance 30 of

1967 is set aside.