

CASE NO.: CR 168/2007

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**THE STATE**

and

**P. H. HAIPINGE**

(HIGH COURT REVIEW CASE NO.: 1842/2007)

CASE NO.: CR 169/2007

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**THE STATE**

and

**H. PURIZA**

(HIGH COURT REVIEW CASE NO.: 1843/2007)

**CORAM:                   HOFF, J et MULLER, J**

Delivered on:                   03 December 2007

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**REVIEW JUDGMENT**

**MULLER, J.:**

[1] In these two matters submitted to me for review both accused persons were convicted of contempt of court and both were sentenced to a fine of N\$100 or 30 days imprisonment. The main charge against both accused was a contravention of the appropriate Regulation in terms of the Road Traffic and Transport Act No. 22 of 1999 for not wearing a seat belt. Both pleaded guilty,

were treated in terms of s 112(1)(a) of the Criminal Procedure Act No 51 of 1977 and fined to N\$300 or 30 days imprisonment. These reviews only concern the conviction of contempt of court.

[2] It appears from the records of these that cases the offences of contempt of court are approximately similar in respect of both accused:

“In respect of Haipinge:

“P/O: Why did you not switch off your cell before entering the court?

*Acc: I did not know that I’m not allowed to bring my cell phone into court.*

*Ct: Guilty of contempt of court.*

*Sentenced to a fine of N\$100 or 30 days imprisonment.”*

**In respect of Puriza:**

“P/O: Is there reason why your cell phone is not switched off?

*Acc: I forgot.*

*P/O: Unacceptable complete disrespect for the court. Found in contempt of court.*

*Ct: Guilty of contempt of court.*

*Sentenced to a fine of N\$100 or 30 days imprisonment.”*

[3] From these proceedings it is apparent that:

- a) it was the same presiding magistrate;
- b) both accused were undefended;
- c) both accused did not switch off their cellular phones and I infer that both phones apparently rang in court;
- d) Puriza’s excuse was that he forgot to switch his phone off and Haipinge did not know it was not allowed to bring the phone into court;
- e) None of the accused were warned by the magistrate that it

may be regarded as an act of contempt of court;

- f) None of the accused were given the opportunity to make submissions after having been warned as mentioned in e) above and none were given the opportunity to apologise to the magistrate; and
- g) None of the accused were afforded the opportunity to make submissions in mitigation of sentence.

[4] The magistrate evidently did not consider the previous decisions of this court in respect of the offence of contempt of court, as such *S v Johannes Paaie* 2006 (1) NR 83 (HC), which judgment was also distributed to all magistrates in Namibia. It is further evident that the magistrate did not comply with the requirements set out in that judgment. In addition, it is clear from the cursory recording of the proceedings that the magistrate was over-sensitive and abused her position in convicting both the accused for contempt of court because their phones rang. The fact that a cellular phone rings in court is not tolerated, but it does not mean that the owner thereof intended to insult the magistrate or that he/she treated the court or the magistrate with contempt. The cursory recording does not indicate that either of them acted in that manner or were warned before, but despite the warning, still did not switch off their phones. In my opinion these two incidents did not warrant anything more than stern warning by the court. Only if they ignored that warning, it might have been seen as possibly insulting or contemptuous behaviour, but even then the magistrate were

obliged to comply with what she was required to do, namely to afford these two persons the opportunity to explain, or to apologise and if convicted, to present evidence in mitigation.

[5] This was not done and the convictions and sentences cannot stand. Consequently, the following orders are made in respect of these cases:

1. The convictions of contempt of court and sentences of both accused, namely P. H. Haipinge in case no 17637/07 and H. Puriza Case no16623/07 are set aside;
2. Any fines paid by any of the accused P. H. Haipinge and H. Puriza in respect of the convictions of contempt of court and sentences imposed in respect thereof, must be refunded to them.

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**MULLER, J**

I concur

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**HOFF, J**