

THE STATE

and

JAMES SHIMWANDI

DAMASEB, JP et MANYARARA, AJ

17 JUNE 2008

SUMMARY

- Road Traffic and Transport Act 22 of 1999.
- Section 51.
- Suspension of driving licence mandatory on conviction of contravening section 78(1)(a), (b) and (c); 80(1) and 82(1), (2), (5) and (9).
- Magistrate omitting to apply the provision.
- Record returned to magistrate to comply with the provision.

CASE NO. CR 70/08

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

JAMES SHIMWANDI

(HIGH COURT REVIEW CASE NO.: 340/08)

CORAM: DAMASEB, JP. *et* MANYARARA, A.J.

Delivered on: 2008.06.17

REVIEW JUDGMENT

1. **MANYARARA, A.J.:** [1] The Accused was charged with contravening three provisions of the Road Traffic and Transport Act 22 of 1999 (the Act) and these are: firstly, contravening section 82(1) (driving while under the influence of intoxicating liquor or a drug having a narcotic effect), wrongly cited as section 81; secondly, contravening section 80(1) (reckless or negligent driving); and thirdly, contravening section 83 (use of motor vehicle without the owner's consent). He pleaded not guilty.

- [2] The magistrate discharged him on count 1 in terms of section 174 of the Criminal Procedure Act. He was convicted on count 2 and sentenced to N\$1000-00 or 6 months imprisonment and convicted on count 3 and sentenced to N\$600-00 or 5 months imprisonment.

- [3] The convictions and sentences are proper and these must be allowed to stand. However, the magistrate omitted to suspend the accused's

driving licence or, if the accused is not the holder of a driving licence, to declare him to be disqualified from obtaining a learner's licence or driving licence for a specified period as provided by section 51 of the Act.

[4] Upon being queried over the omission (incorrectly referred to by the reviewing Judge as omission to apply "*section 50(1)*" of the Act), the magistrate attributed the omission to "*human erra (sic)*" and requested that his mistake be corrected.

[5] Accordingly, the convictions and sentences are confirmed and the record is returned to the trial court for the magistrate to comply with the provisions of section 51 of the Act.

MANYARARA, AJ

I agree

DAMASEB, JP