



CASE NO.: CR 56/2010

NOT IMPORTANT

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

and

LEANETH GAWANAB

(HIGH COURT REVIEW CASE NO.: 1354/2010)

CORAM: MULLER, J et HOFF, J

Delivered on: 27 September 2010

REVIEW JUDGMENT

MULLER, J.: [1] The accused was convicted of a charge of contravening S 2 of the Arms and Ammunition Act, no. 7 of 1996 (the Act). He was sentenced to pay a fine of N\$3000.00, or in default, imprisonment of 1 year.

[2] Together with the review the Magistrate addressed the following letter to the Court:

“Attached herewith, find the above case for review. Please be informed that I have omitted to apply the provisions of Section 10(5) of Act 7 of 1996. I realized this only today whilst preparing the said case for it to

be sent on review. I humbly apologize for inconveniences caused by such omission”.

[3] Except that the provision in S 10(5) of the Act is not the applicable provision in the present circumstances, the Magistrate’s submission seems to be correct. The correct provisions seem to be S 10(6) and (7) of the Act. In both instances the Magistrate has discretion to declare the convicted accused unfit to possess a firearm after the accused had the opportunity to convince the Magistrate otherwise.

[4] In the light thereof that the accused is entitled to have an input in this regard, after the Magistrate informed him that he may be declared unfit to possess a firearm for at least 2 years (S10(8)), the matter has to be remitted to the Magistrate to act in terms of the appropriate provisions of the Act.

[5] I am satisfied that the conviction is in order and it will be confirmed. The issue regarding declaring the accused being unfit to possess a firearm for a specified period may be a consideration for imposing a particular sentence. Consequently, the sentence will be set aside and the Magistrate would be entitled to consider the sentence, which he intends to impose, afresh, together with a possible declaration in terms of S 10(6) and (7) of the Act.

[6] In the result the following orders are made:

- 1) The conviction of the accused is confirmed;
- 2) The sentence imposed is set aside;

- 3) The matter is remitted to the Magistrate to impose a sentence and to comply with the appropriate provisions of Act 7 of 1996.

MULLER, J

I agree

HOFF, J