

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CR 76/2012

In the matter between:

**THE STATE**

and

**FAUSTINUS KASESA SILEHA**

**Neutral citation:** *The State v Sileha* (CR 76/2012) [2012] NAHCMD 1 (21 September 2012)

**Coram:** VAN NIEKERK J and UEITELE J

**Flynote:** Criminal procedure – Plea – Plea of guilty – Conviction in terms of section 112(1)(a) of Criminal Procedure Act – Accused sentenced to N\$2 000 or 3 month imprisonment – Maximum fine at the time was N\$300 – Sentence not

competent – Sentence reduced to N\$300 or 1 month imprisonment

**Summary:** The accused was charged inter alia with a contravention of section 31 of the Road Traffic and Transport Act, 1999 (Act 22 of 1999) (Driving a motor vehicle without a driver's licence). The magistrate applied section 112(1)(a) of the Criminal Procedure Act, 1977 (Act 51 of 1977) and summarily convicted the accused. The sentence passed was one of N\$2 000 or 3 months imprisonment. At the time the maximum sentence provided for by section 112(1)(a) was a fine of N\$300. The sentence imposed was therefore not competent. On automatic review the sentence was reduced to one of N\$300 or 1 month imprisonment.

### **ORDER**

In the result the following order is made:

1. The conviction and sentence on count 1 are confirmed.  
The conviction on count 2 is confirmed.
2. The sentence on count 2 is reduced to a fine of \$300 (Three hundred Namibia Dollar) or 1 (one) month imprisonment.

### **REVIEW JUDGMENT**

VAN NIEKERK, J (UEITELE, J concurring):

[1] The accused was convicted by the magistrate at Grootfontein on a charge of culpable homicide arising from the negligent driving of a motor vehicle and on a count of c/sec 31 of the Road Traffic and Transport Act, 1999 (Act 22 of 1999) (Driving a motor vehicle without a driver's licence). On the first count he was sentenced to N\$15 000 or 3 years imprisonment. On the second count he was sentenced to N\$2 000 or 3 months imprisonment.

[2] The conviction and sentence in respect of count 1 is in order. On count 2 the magistrate acted in terms of section 112(1)(a) of the Criminal Procedure Act, 1977 (Act 51 of 1977) ("the CPA"). The sentence imposed is not competent as section 112(1)(a) at the time that sentence was passed made provision for a maximum fine of N\$300.

[3] Unfortunately this review record was mislaid after being attended to by the original Reviewing Judge to whom it was assigned. As he has since retired the matter was re-assigned for review. In the meantime the trial magistrate has left service as a judicial officer. It would therefore serve no purpose to require him to respond to any query from me. I therefore intend finalizing the matter.

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

1. The conviction and sentence on count 1 are confirmed.  
The conviction on count 2 is confirmed.
2. The sentence on count 2 is reduced to a fine of \$300 (Three hundred Namibia Dollar) or 1 (one) month imprisonment.

K van Niekerk

Judge

S Ueitele

Judge