



**HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI**

**JUDGMENT**

Case no: CR 24/2012

In the matter between:

**THE STATE**

and

**JULIUS MBALULU**

**High Court NLD Review Case Ref No.: 126/2012**

**Neutral citation:** *The State v MBALULU* (CR 24/2012) [2012] NAHCNLD 04  
(31 October 2012)

**Coram:** LIEBENBERG J and TOMMASI J

**Delivered:** 31 October 2012

**Flynote:** Criminal law — Arms and ammunition — Conviction of crime involving use of firearm — Section 10 of Arms and Ammunition Act 7 of 1996 peremptory — Accused having to be afforded opportunity by court to state why he should not be declared unfit to use firearm.

**Summary:** The accused was convicted on his plea of guilty on a charge of contravening s 2 of the Arms and Ammunition Act 7 of 1996 – Prosecution did not invoke s 10 of Act – Court should do so mero motu – Provision is peremptory and to afford an accused an opportunity to advance reasons or lead evidence why he or she should not be declared unfit to possess an arm.

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## ORDER

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In the result the following orders are made:

1. The conviction and sentence are confirmed.
  2. The matter is remitted to the magistrate in order to comply with the provisions set out in subsections (6), (7) and (8) of s 10 of the Arms and Ammunition Act 7 of 1996.
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## JUDGMENT

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LIEBENBERG J (TOMMASI J concurring):

[1] The accused appeared in the Eenhana magistrate's court and was convicted on his plea of guilty on a charge of possession of a firearm without a licence in contravention of s 2 of the Arms and Ammunition Act 7 of 1996 ('the Act') and sentenced to 36 months' imprisonment of which 24 months' imprisonment suspended on condition of good conduct.

[2] The conviction and sentence appear to be in order and will be confirmed on review.

[3] When the matter came before me on review I directed a query to the magistrate enquiring from her why she, in view of the accused's conviction, failed to comply with the provisions of subsecs 6, 7 and 8 of the Act (there was a typographical error and it should have read) s 10 (6); 10 (7) and 10 (8) of the Act. The aforementioned subsections of s 10 provide that a person convicted of being in possession of an arm without the required licence (s 2) is deemed to be declared unfit to possess an arm unless the court determines otherwise (subsec (6)(a)); that the provisions of subsec (6) should be brought to the attention of the accused and afford him or her the opportunity to advance reasons and present evidence why such person should not be declared or deemed to be declared unfit to possess an arm (subsec (7)); and that the court may declare such person unfit to possess an arm for a period fixed by the court, but which period may not be less than two years (subsec (8)).

[4] The prosecution did not invoke the provisions of these subsections once the court convicted the accused and by failing to do so, the court should mero motu have done so. See *S v Titus* 2011 NR 109 (HC).

[5] The magistrate now concedes that she omitted to comply with the provisions set out above and requests the court to remit the matter for compliance with s 10 of the Act. Whereas the relevant subsections of section 10 are in peremptory terms, the magistrate's proposal is properly made.

[6] In the result, it is ordered:

- a. The conviction and sentence are confirmed.
- b. The matter is remitted to the magistrate and she is directed to give effect to the provisions set out in subsections (6), (7) and (8) of s 10 of the Arms and Ammunition Act 7 of 1996.

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**JC LIEBENBERG**

JUDGE

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**MA TOMMASI**

JUDGE