

REPUBLIC OF NAMIBIA

IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION

HELD AT WINDHOEK

CASE NO. CR 23/2012

In the matter between:

THE STATE

and

ABEL AMBAMBI

(HIGH COURT REVIEW REF NO. 397/2012)

CORAM: VAN NIEKERK, J et SHIVUTE, J

Delivered: April 2012

REVIEW

VAN NIEKERK, J: [1] In this matter the accused was convicted in the magistrate's court at Windhoek on a charge of contravening section 82(2)(a) of the Road Traffic and Transport Act, 1999 (Act 22 of 1999), and sentenced to a fine of N\$3 000 or 12 months imprisonment of which half was suspended for three years on two conditions. The first relates to the accused not repeating the same offence. This is in order. The second condition reads as follows: "that i.t.o. s 51(2) of Act 22 of 1999 his licence is hereby suspended for a period of 3 (three) months and accused is warned not to drive a motor vehicle within the period of suspension."

[2] Although the order is relevant to sentence, the order itself is not part of the sentence. See section 51(1) of Act 22 of 1999 which provides that "the court shall, apart from imposing a sentence issue an order whereby every driving licence held by such person is suspended". The order for suspension of the licence should therefore be made separately from the sentence.

[3] However, what is of greater concern here is that the order as framed is ambiguous and causes confusion. Firstly, the order may be interpreted that the accused is warned not to drive a motor vehicle within the three month period, but it may also be interpreted that he should not drive a motor vehicle within the three year period. I assume the intention is to limit the warning to the three month period. Secondly and more importantly, there is uncertainty about the effect should the accused drive a motor vehicle within the three month

period. One is not sure if the order must be interpreted that the suspended sentence may then be brought into operation or not. It is trite that a suspended sentence should be clear so that an accused understands exactly what is expected of him or her. In my view the sentence should be re-formulated in a clear manner.

[4] The result is that the sentence is set aside and replaced with the following orders:

1. The accused is sentenced to a fine of N\$3 000 (Three thousand Namibian Dollars) or 12 (twelve) months imprisonment of which N\$1500 (One thousand five hundred Namibian Dollars) or 6 (six) months imprisonment are suspended for a period of 3 (three) years on condition that the accused is not convicted of a contravention of section 82(2)(a) of the Road Traffic and Transport Act, 1999 (Act 22 of 1999) (Driving with excessive alcohol concentration in breath), committed within the period of suspension.
2. The accused's licence is suspended for a period of 3 (three) months in terms of section 51 of the Road Traffic and Transport Act, 1999 (Act 22 of 1999).

VAN NIEKERK, J

I agree.

SHIVUTE, J