



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CR 79/2013

In the matter between:

THE STATE

and

DICKSON MICHAEL KAMBAHE

ACCUSED

(HIGH COURT MAIN DIVISION REVIEW REF NO.: 1465/2013)

Neutral citation: *State v Kambahe* (CR 79-2013) [2013] NAHCMD 337 (15 November 2013)

Coram: HOFF J and UNENGU AJ

Delivered: 15 November 2013

Flynote: Arms and Ammunition Act, 1996 (Act 7 of 1996) – Possession of an arm without a licence, permit or authorization – Section 10(8) provides for a period of not less than two years to declare a person convicted of unlawful possession of an arm unfit to possess an arm – A period of 12 months ordered by the magistrate has been substituted with a period of 24 months.

Summary: The accused person who was convicted of the unlawful possession of an arm in contravention of the Arms and Ammunition Act, 1996 (Act 7 of 1996), was declared unfit to possess an arm for a period of 12 months. On review, the period of 12 months was substituted with a period of 24 months.

ORDER

1. The conviction and sentence are confirmed.
2. The order made by the learned magistrate that the accused person is declared unfit to possess a fire arm for a period of 12 months, is set aside and substituted with the following order:

‘In terms of section 10(8) of the Arms and Ammunition Act, 1996 (Act 7 of 1996), the accused person is declared unfit to possess an arm for a period of 24 months’

JUDGMENT

UNENGU AJ (HOFF J concurring):

[1] This matter is submitted for automatic review following the provisions of the Criminal Procedure Act, 1977 (The CPA)¹.

[2] The accused person was charged with an offence of possession of a fire arm without a licence, i.e. a contravention of the Arms and Ammunition Act². He was convicted and sentenced to pay a fine of N\$4000.00 or in default of payment to 24 months imprisonment of which N\$1000.00 or 12 months imprisonment suspended for a period of 5 years on the usual conditions. In addition, the accused was declared unfit to possess an arm for a period of 12 months³.

¹ S 112(1)(b) of Act 51 of 1977

² S 2 read with S 1, 38(2) and 39 of Act 7 of 1996 as amended

³ S 10(8) Act 7 of 1996 as amended

[3] I queried the learned magistrate as whether he had regard to the provisions of section 10(8) of the Arms and Ammunition Act, 7 of 1996 when the period of unfitness to possess an arm by the accused was determined.

[4] In his reply to the query, the magistrate conceded that the section⁴ is mandatory in that where the court declares a person convicted of contravening the provisions of the Act relating to the unlawful possession of an arm without the required licence, permit or other authorisation, such person is declared unfit to possess and arm for a period not less than two years. He further conceded that he erred to have declared the accused person unfit to possess a fire arm for a period of 12 months and suggested that the period of 12 months be substituted with a period of 24 months. The suggestion by the learned magistrate is, in my view, in order and shall comply therewith.

[5] That being the case, the following order is made:

1. The conviction and sentence are confirmed.
2. The order made by the learned magistrate that the accused person is declared unfit to possess a fire arm for a period of 12 months, is set aside and substituted with the following order:

‘In terms of section 10(8) of the Arms and Ammunition Act, 1996 (Act 7 of 1996), the accused person is declared unfit to possess an arm for a period of 24 months’

PE Unengu
Acting

⁴ See 3 above

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E Hoff
Judge