

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case No: CR 20/2013

In the matter between:

**THE STATE**

and

**ANTON ZAMBWE ZAMBWE**

(HIGH COURT MAIN DIVISION REVIEW REF NO 833/2012)

**Neutral citation:** *S v Zambwe* (CR 20-2013) [2013] NAHCMD 77 (22 March 2013)

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

**Delivered:** 22 March 2013

**Flynote:** **Criminal law** – The maxim ‘ignorance of the law is no excuse’ is no longer part of our law since the decision in *S v De Blom* 1977 (3) SA 513 (A) – Conviction and sentence based in reliance on this maxim set aside

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## ORDER

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The conviction and sentence are set aside.

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## REVIEW JUDGMENT

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VAN NIEKERK, J (UEITELE, J concurring):

[1] The accused was tried and convicted in the magistrate's court held at Ngoma on a charge of possession of a firearm, namely a shotgun, in contravention of section 2 of the Arms and Ammunition Act, 1996 (Act 7 of 1996). Although he initially pleaded guilty to the charge, questioning in terms of section 112(1)(b) of the Criminal Procedure Act, 1977 (Act 51 of 1977), revealed that the accused denied knowledge that it was unlawful to be in possession of a firearm without a licence. He stated that he was given the gun by the owner to carry for self defence. A plea of not guilty was then entered.

[2] The only State witness was the arresting police officer, Sergeant Peya, who testified that, while driving on patrol, he found the accused standing at the side of the road in the Lusese area. The accused had the shotgun in his possession and could not produce a licence or a permit for it. The accused stated that the gun belongs to someone else who stays in Katima Mulilo. The accused also said that the owner had

given him the gun to keep with him while he was driving cattle from the cattle post. The accused did not seem to realize that it is an offence to possess a firearm without a licence. The accused gave his cooperation throughout. He arrested the accused. Under cross-examination he denied the accused's allegation that he actually told the officer that the owner was in the village. He admitted that the accused told him that a copy of the firearm licence was in Ngweze.

[3] The accused testified. His version is that the father-in-law gave him the gun to use for self protection when he had to escort the former's grandchildren on foot in the area, which is dangerous, to a particular place where they got a lift. After that he was walking back when the police met him. He told the police that the firearm was not his, that a copy of the licence was in the village at Nweze and that the original was in the owner's possession.

[4] The accused called his father-in-law as a witness. He confirmed the accused's story, except to state that he is in fact not the owner of the gun, but that his father is the licence holder.

[5] As can be seen from the prosecutor's submissions before judgment, he was of the view that ignorance of the law is no excuse. He therefore made no effort to establish whether the accused in fact had knowledge that he was acting unlawfully when he possessed the firearm without a licence. The trial magistrate was also of the view that ignorance of the law is no excuse and that the State proved its case beyond a reasonable doubt. She also found that the accused knew that one needed a licence to possess a firearm because he told the police that a copy of the licence was in Ngweze. In my view she overlooked that the accused did not volunteer this

information, but gave this information upon questions by the police officer. In my view this evidence does not show that he knew one needed a licence to possess a firearm and also not that he knew that it was an offence if one possessed a firearm without a licence.

[6] On review of this matter I asked the magistrate to provide legal authority for her statement that ignorance of the law is no excuse. In reply she concedes that this maxim is no longer part of our law since the decision in *S v De Blom* 1977 (3) SA 513 (A) and that she laboured under a misconception when she tried the case. She also concedes that there is not sufficient evidence to uphold the conviction. I agree.

[7] The result is that the conviction and sentence are set aside.

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K van Niekerk

Judge

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I agree.

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S F I Ueitele

Judge