

REPUBLIC OF NAMIBIA

NOT REPORTABLE



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CR 11/2014

In the matter between:

**THE STATE**

and

**AUBREY BRANDIT**

**ACCUSED**

**(HIGH COURT MAIN DIVISION REF. NO. 257/2014)**

**(MAGISTRATE SERIAL NO. 04/2014)**

**Neutral citation:** *S v Brandit* (CR 11/2014) [2014] NAHCMD 91(19 March 2014)

**Coram:** NDAUENDAPO, J AND SIBOLEKA J

**Delivered:** 19 March 2014

**Flynote:** Criminal law: It is peremptory that a suspect who has been convicted for a contravention of a provision relating to the unlawful possession of an arm without a licence has to be declared unfit to possess an arm in terms of section 10(6)(a) and (7) of the Arms and Ammunition Act 7 of 1996.

**Summary:** The accused picked up a .22 revolver, which he took to a friend to show his friend and in the process a bullet went off accidentally without injuring any of them, resulting in his arrest.

Held: The conviction and sentence are confirmed.

Held: The matter is referred back to the trial Magistrate to have the accused brought before him in execution of section 10(6)(a) and (7) of the Arms and Ammunition Act 7 of 1996.

---

### **ORDER**

---

The conviction and sentence are confirmed. The matter is referred back to the trial Magistrate to comply with the provisions of section 10(6)(a) and (7) of the Arms and Ammunition Act 7 of 1996.

---

### **REVIEW JUDGMENT**

---

SIBOLEKA J (NDAUENDAPO J concurring):

[1] The accused appeared in the District Magistrate's Court, Omaruru on a charge of contravening Section 2 read with Sections 1, 38(2) and 39 of the Arms and Ammunition Act 7 of 1996, Possession of a firearm without a licence and negligent discharge thereof.

[2] He pleaded guilty and after questioning him in terms of Section 112(1)(b) of Act 51 of 1977 the court was correctly satisfied with his plea, convicted and sentenced him accordingly.

[3] However, the court did not comply with the peremptory provisions of Section 10(6)(a) and (7) of Act 7 of 1996. It is for this reason that the matter should be referred back to the trial Magistrate to enable him to act in terms of those sections.

[4] The conviction and sentences are in accordance with law and this court will not interfere with them.

[5] In the result I make the following order:

The conviction and sentence are confirmed.

The matter is referred back to the trial Magistrate or in his absence any Magistrate to act in terms of Section 10(6)(a) and (7) of Act 7 of 1996.

-----

A M SIBOLEKA

Judge

-----

G N NDAUENDAPO

Judge