



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case no.: CR 48 /2017

THE STATE

versus

WILLY HAIXUNA

(HIGH COURT MAIN DIVISION REVIEW REF NO. 392/2017)

Neutral citation: *S v Haixuna* (CR 48/2017) [2017] NAHCMD 219 (11 August 2017)

Coram: NDAUENDAPO J and SHIVUTE J

Delivered: 11 August 2017

Flynote: Section 51 of Act 22 of 1999 – Obligatory suspending of licence upon conviction of certain offences – Accused was convicted of contravening s 82 (5) (a) driving a vehicle while the concentration of alcohol level of breath exhaled exceeds 0,37 milligrams per 1000 millilitres – Magistrate failing to invoke provisions of s 51 – Such failure amounts to misdirection.

ORDER

- a) The conviction and sentence are confirmed.
- b) The matter is referred back to the magistrate to invoke the provisions of s 51 of Act 22 of 1999.

REVIEW JUDGMENT

SHIVUTE J, (NDAUENDAPO J CONCURRING)

[1] The accused was convicted of driving with an excessive breath alcohol level contravening section 82 (5) (a) read with ss1, 82(6), 82 (7) 86, 89 (1) and 89 (4) of the Road Traffic and Transportation Act 22 of 1999 after a plea of guilty.

[2] He was sentenced to N\$5000 (five thousand) fine or in default of payment 18 months' imprisonment. The matter was referred before me for review with a covering letter by the magistrate explaining that when she was proof reading the matter to be forwarded for review she realised that she did not suspend the accused's licence as required by law, and requests the reviewing judge to make an order pertaining to the licence.

[3] Section 51(1) of the Road Traffic and Transport Act makes provision that where a person who is the holder of a driving licence is convicted by a court of an offence-(a)...

(b)...

(c) Under section 82 (1), (2),(5) or (9) the court shall apart from imposing a sentence and except if the court under section 50 (1) (a) issues an order for the

cancellation of the licence, issue an order whereby every driving licence held by such person is suspended in accordance with the provisions of subsection (2).

[4] An order of suspension pursuant to subsection (1) shall be made for such period as the Court may determine, but which shall not be less than-

- (a) three months, in the case of a first offender,
- (b) one year in the case of a second conviction, and
- (c) five years, in the case of a third or subsequent conviction.

[5] If a person convicted of an offence mentioned in subsection (1) is not a holder of a driver's licence, the court apart from imposing a sentence, shall declare such person to be disqualified from obtaining a learner's licence or driving licence for a period as the Court may determine, but not being less than the minimum period contemplated in paragraph (a) (b) or (c) of subsection (2) as may be applicable.'

[4] The provisions of s 51 are obligatory and they should be adhered to without any exception in relation to the provisions of s 82 (5).

[5] I have no problem with the conviction as well as the sentence imposed. However, since the learned magistrate failed to invoke the provisions of s 51 I have no alternative but to refer the matter back to the magistrate as her failure amounts to a misdirection.

[6] In the result the following order is made:

- a) The conviction and sentence are confirmed.
- b) The matter is referred back to the magistrate to invoke the provisions of s 51 Act 22 of 1999.

NN SHIVUTE
Judge

G N NDAUENDAPO

Judge