



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK  
APPEAL JUDGMENT**

**CASE NO: CA 29/2017**

In the matter between:

**MATIAS SHATIPAMBA**

**APPELLANT**

and

**THE STATE**

**RESPONDENT**

**Neutral citation:** *Shatipamba v S* (CA 29/2017) [2017] NAHCMD 238 (23 August 2017)

**Coram:** SIBOLEKA J and UNENGU AJ

**Heard on:** 28 July 2017

**Delivered on:** 23 August 2017

**Flynote:** Criminal law – Appeal – Period for suspension of driver’s licence specified by statute – order in excess thereof ultra vires – appeal succeeds.

**Summary:** Appellant a first offender was convicted for driving under the influence of intoxicating liquor in contravention 82(1)(a) read with sections 1, 86, 89(1) and 89(4) of the Road Traffic and Transportation Act, Act 22 of 1999. His driver's licence was suspended for 12 months which is in excess of the prescribed three months for first offenders.

Held: It is for the above reason that the suspension order of the appellant's driving licence cannot be allowed to stand.

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### **ORDER**

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In the result I make the following order:

The conviction and sentence are confirmed.

The order of the suspension of the appellant's drivers licence for 12 months is substituted with the following:

In terms of section 51(2)(a) of the Road Traffic and Transportation Act 22 of 1999 the driving licence of the appellant; Licence No. 500500000 GVW issued on 05 July 2011 is hereby suspended for a period of three months from the date of sentence which is: 14 February 2017. This order is antedated 14 February 2017.

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### **APPEAL JUDGMENT**

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SIBOLEKA J (UNENGU AJ concurring):

[1] The appellant made an appearance in the Magistrate's Court of Luderitz on a charge of driving under the influence of intoxicating liquor in contravention of section 82(1)(a) read with section 1, 86, 89(1) and 89(4) of the Road Traffic and Transportation Act, Act 22 of 1999. He pleaded guilty and after questioning in terms of section 112(1)(b) of the Criminal Procedure Act 51 of 1977, he was convicted and sentenced as follows:

Sentence N\$3 000 (Three Thousand Namibian Dollars) or 18 (Eighteen) months imprisonment.

[2] The order for the suspension of his driver's licence reads as follows:

“Order

1. In terms of Section 51(2)(a) the driving licence of the accused person; licence nr. 500500000 GVM issued on 05 July 2011 is hereby suspended for the period of 12 months from the date of sentence”.

[3] The provision for the suspension of a driver's licence states the following:

“51 Suspension of licence upon conviction of certain offences

- (1) Where a person who is the holder of a driving licence is convicted by a Court of an offence –
  - (a) ...
  - (b) ...
  - (c) ... issue an order whereby every driving licence held by such person is suspended in accordance with the provisions of subsection (2)
- (2) An order of suspension pursuant to subsection (1), shall be made for such a period as the Court may determine, but which shall not be less than -
  - (a) Three months, in the case of a first conviction;
  - (b) ...
  - (c) ...”

[4] From the above it is very clear that the driving licence of the appellant, a first offender, was suspended in excess of the proscribed limit.

[5] It is for this reason that the said order of the suspension should not be allowed to stand.

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

The order of the Magistrate, Luderitz, suspending the appellant's driving licence is substituted with the following:

In terms of section 51(2)(a) of the Road Traffic and Transportation Act 22 of 1999, the driving licence of the appellant; Licence No. 500500000 GVW issued on 05 July 2011 is hereby suspended for a period of three months from the date of sentence which is 14 February 2017. This order is antedated 14 February 2017.

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A M SIBOLEKA  
Judge

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E P UNENGU  
Acting Judge

APPEARANCES

APPELLANT : In Person  
Windhoek Central Prison

RESPONDENT : Mr S. Nduna  
Office of the Prosecutor-General, Windhoek