



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

CR No: 57/2017

In the matter between:

THE STATE

and

1. FHILLEN HAUFIKU WILLEM

(HIGH COURT REVIEW CASE NO: 1334/2017)

2. JAMES HAUFIKU

(HIGH COURT REVIEW CASE NO: 1337/2017)

3. ELIFA GHILIFAVALI KRISJAN

(HIGH COURT REVIEW CASE NO: 1342/2017)

Neutral citation: S v Willem (CR 57/2014) [2017] NAHCMD 264 (11 September 2017)

CORAM: DAMASEB JP et LIEBENBERG, J

DELIVERED: 11 September 2017

ORDER

1. In each matter:

1.1 The conviction and sentence is confirmed.

1.2 The order in terms of the provisions of section 51 of the Road Traffic and Transportation Act 22 of 1999 is set aside and the matter remitted to the magistrate to be dealt with afresh as directed by this judgment.

1.3 The registrar is directed to bring this judgment to the attention of the Chief Magistrate.

REVIEW JUDGMENT

DAMASEB JP:

[1] The above matters are review matters, the first two of which emanate from the District of Walvis Bay and the last from the District of Windhoek. These matters were presided over by different magistrates and finalised in terms of s 112(1)(b) of the Criminal Procedure Act 51 of 1977 ("Act"). They all raise the same issue.

[2] In the three matters, the accused persons were convicted for contraventions of the Road Traffic and Transportation Act 22 of 1999 ("Road Traffic Act") and had sentences in varying amounts of fines imposed upon them, in default of which imprisonment of

varying periods would follow. Coupled with this sentence, the magistrates applied the provisions of s 51 of the Road Traffic Act, which reads:

'Suspension of licence upon conviction of certain offences

51.(1) Where a person who is the holder of a driving licence is convicted by a court of an offence -

- (a) under section 78(1)(a), (b) or (c) in the case of an accident which resulted in the death or injury of a person;
- (b) under section 80(1) of driving a vehicle recklessly; or
- (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).

(2) 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 conviction;
- (b) one year, in the case of a second conviction;
- (c) and five years, in the case of a third or subsequent conviction.

If a person convicted of an offence mentioned in subsection (1) is not the holder of 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 such 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.'
(My underlining)

[3] In each matter, a perusal of the record of the proceedings demonstrates that the provisions of s 51 of the Road Traffic Act were applied without the effect and import thereof being explained to the accused persons with the consequence that the accused persons were not invited to make representations whether or not the court should

exercise the discretion to disqualify the accused from obtaining a learner's licence or driving licence.

[4] The tenets of natural justice dictate that persons likely to be affected by a decision of a court or tribunal be afforded an opportunity to make representations before a decision is made. Recently in *The State v Japhet Nekaya* (CR 19/2017) [2017] NAHCMD 70 (10 March 2017) (unreported), Liebenberg J, correctly observed the following:

[3] The provisions of s 51 must first be explained to accused where after he be afforded the opportunity to lead evidence and/or address the court as to the period for which his licence should be suspended'.

[5] Accordingly, when a trial court is compelled to invoke the provisions of s 51 of the Road Traffic Act upon the conviction of an accused person in terms of the applicable offences in terms of the Road Traffic Act, it must after conviction but before mitigation of sentence, read and explain the import of the provisions of section 51 of the Road Traffic Act to the accused person and invite his/her comment or representation thereon.

[6] In all these matters, this was not done and the implicated orders are thus liable to be set aside. The conviction and sentences are in accordance with justice and are accordingly confirmed.

[7] In the result, it is ordered:

1. In each matter:

1.1 The conviction and sentence is confirmed.

1.2 The order in terms of the provisions of section 51 of the Road Traffic and Transportation Act 22 of 1999 is set aside and the matter remitted to the magistrate to be dealt with afresh in as directed by this judgment.

1.3 The registrar is directed to bring this judgment to the attention of the Chief Magistrate.

P T DAMASEB
JUDGE-PRESIDENT

I concur.

J C LIEBENBERG
JUDGE