



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case no: CR 62/2017

In the matter between:

**THE STATE**

And

**KAYAWALA DANIEL**

**ACCUSED**

(HIGH COURT MAIN DIVISION REVIEW REF NO. 1634/2017)

**Neutral citation:** *S v Kayawala* (CR 62/2017) [2017] NAHCMD 313 (02 November 2017)

**Coram:** USIKU, J and UNENGU, AJ

**Delivered:** 02 November 2017

**Flynote:** Criminal Procedure – Special Review – Request by Divisional Magistrate – Accused declared unfit to possess an arm for a period of one year while s 10(8) of the Arms and Ammunition's Act 7 of 1996 providing for a period not less than two years – A period of one year substituted for a period of two years.

**Summary:** The accused who was convicted of attempted murder was declared unfit to possess an arm for a period of one year, while the period provided for in s 10(8) of Arms and Ammunition's Act, 7 of 1996 is a period of not less than two years. The court, on the request of the divisional magistrate corrected the mistake by substituting the one year period for a period of two years.

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### ORDER

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- (i) In terms of the provisions of s 10(8) of Act 7 of 1996, the accused is declared unfit to possess an arm for a period of two years.
  - (ii) The order is back-dated to 14 September 2016.
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### REVIEW JUDGMENT

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**UNENGU, AJ (USIKU, J concurring):**

[1] The accused was convicted of the crime of attempted murder involving a fire-arm. He was sentenced to pay a fine of N\$10 000.00 or two years imprisonment and declared unfit to possess an arm in terms of s 10(8) of the Arms and Ammunition's Act 7 of 1996, for a period of one year.

[2] It is the order declaring the accused unfit to possess an arm for a period of one year which prompted the learned divisional magistrate for the Otjiwarongo division to send the matter on special review with a request to correct the order of the presiding magistrate with regard to the period of one year the accused was declared unfit to possess an arm.

[3] The divisional magistrate is correct. The provisions of s 10(8) of the Arms and Ammunition's Act 7 of 1996 are peremptory and provide that when a person is declared unfit to possess an arm such period shall not be less than two years.

[4] That being the case, the order made by the magistrate that the accused is declared unfit to possess an arm for a period of one year is set aside and substituted for the following order:

- (i) In terms of the provisions of s 10(8) of Act 7 of 1996, the accused is declared unfit to possess an arm for a period of two years.
- (ii) The order is back-dated to 14 September 2016.

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P E UNENGU  
Acting Judge

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D USIKU  
Judge