



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case no: CR 70/2017

In the matter between:

THE STATE

and

MERVIN HAMBEKA**ACCUSED****(HIGH COURT MAIN DIVISION REVIEW REF NO. 1470/2017)**

Neutral citation: *S v Hambeka* (CR 70/2017) [2017] NAHCMD 347 (4 December 2017)

Coram: USIKU J and UNENGU AJ

Delivered: 4 December 2017

Flynote: Criminal law – Sentencing – Section 1, 38 (2) and 39 of Act 7 of 1996 as amended – Convictions requires that section 10 (7) be complied with – declaration of unfitness to possess a fire-arm mandatory.

Summary: The accused was convicted on a charge of possession of a fire-arm without a licence whereafter he was sentenced to pay a fine of N\$4000 or ten months imprisonment.

Held: The conviction and sentence are confirmed. The matter is however sent back to the trial magistrate Okahandja to comply with the provisions of section 10 (7) of Act 7 of 1996 as amended.

ORDER

The conviction and sentence are confirmed. The matter is sent back to the trial magistrate, Okahandja to comply with the declaration of unfitness provisions of section 19 (7) of Act 7 of 1996 after the enquiry.

REVIEW JUDGMENT

USIKU J, (UNENGU AJ concurring)

[1] This is a review matter in which the accused was convicted on a charge of possession of a fire-arm without a licence whereafter he was sentenced to pay a fine of N\$4000 or in default 10 months imprisonment.

[2] When the case came before me I directed the following query to the trial magistrate: "Can the learned magistrate explain why the provisions of section 10 (7) of 1996, Arms and Ammunition Act, not complied with after conviction?"

[3] The learned magistrate responded as follows to the query: "I laboured under the impression that since accused did not have a firearm licence, that there was no need for me to invoke the provisions of the said section. He went on to quote verbatim the provisions of section 10 (7).

[4] The trial magistrate conceded that he had misdirected himself and should have invoke the said provisions. The concessions made by the trial magistrate are correct, as the Act, stipulates that the court shall upon convicting any person bring

the provisions to the notice of such person. The accused was convicted and as such the provisions of section 10 (7) ought to have been immediately invoked after the inquiry.

[5] In other words the learned magistrate was obliged to proceed with the enquiry after conviction and sentence.

[6] In the light of the above omission I make the following order:

- (1) The conviction and sentence are confirmed.
- (2) The matter is sent back to the trial magistrate, Okahandja to comply with the provisions of section 19 (7) of Act 7 of 1996.
- (3) The accused must be brought to court immediately.

D N USIKU
Judge

E P Unengu
Judge