

REPUBLIC OF NAMIBIA

NOT REPORTABLE



HIGH COURT OF NAMIBIA, MAIN DIVISION

JUDGMENT

CR No: 19/2017

In the matter between

THE STATE

and

JAPHET NEKAYA

HIGH COURT MD REVIEW CASE NO 290/2017

Neutral citation: S v Nekaya (CR 19/2017) [2017] NAHCMD 70 (10 March 2017)

CORAM: LIEBENBERG J et SHIVUTE J

DELIVERED: 10 March 2017

ORDER

1. The conviction and sentence are confirmed.
2. The accused to be brought before court and the trial court is directed to hold an inquiry as provided for in terms of s 51 of Act 22 of 1999.

JUDGMENT

LIEBENBERG J: (Concurring SHIVUTE J)

[1] The accused pleaded guilty and was convicted of driving with an excessive breath alcohol level in contravention of s 82(5)(a) of the Road Traffic and Transportation Act 22 of 1999 (the Act) and was sentenced to a fine of N\$8 000 or 12 months' imprisonment. The conviction and sentence are in order and will be confirmed on review.

[2] When the matter came before me on review I directed a query to the presiding magistrate enquiring why the court did not invoke the provisions of s 51(1)(c) of the Act as the court was compelled to do. This section provides as follows:

'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) 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; and

(c) five years, in the case of a third or subsequent conviction.

(3) If a person convicted of an offence mentioned in subsection (1) is not the holder of a driving 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.'

(Emphasis provided)

[3] The magistrate in his statement explained that he is familiar with the provisions of s 51 but merely omitted to comply with the provisions of the section. Whereas the provisions are mandatory, the court misdirected itself by failing to give effect thereto. It however does not impact on the sentence itself and can be corrected by having the

accused brought before court for purposes of the inquiry. The provisions of s 51 must first be explained to the 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.

[4] In the result, it is ordered:

1. The conviction and sentence are confirmed.
2. The accused to be brought before court and the trial court is directed to hold an inquiry as provided for in terms of s 51 of Act 22 of 1999.

J C LIEBENBERG

JUDGE

N N SHIVUTE

JUDGE