

REPUBLIC OF NAMIBIA



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

CR NO: 62/2018

In the matter between:

THE STATE

v

SEMSON SELVANUS KAMBUNDJI

ACCUSED

Neutral citation: S v Kambundji (CR 62/2018) [2018] NAHCMD 243 (14 August 2018)

Coram: LIEBENBERG J et SHIVUTE J

Delivered: 14 August 2018

Flynote: Accused charged and convicted with wrong section – No prejudice to accused if court alters conviction to read – Guilty of possession of prohibited dependence producing substance – Contravening s 2(b) Act 41 of 1971 - Sentence imposed by magistrate subsequently altered.

ORDER

- a) The conviction is altered to read, guilty of possession of prohibited dependence producing substance, contravening s 2 (b) of Act 41 of 1971.
- b) The accused is sentenced to N\$ 1000 (one thousand Namibia dollar) fine or 6 months imprisonment. The sentence is antedated to 11 May 2018.

REVIEW JUDGMENT

SHIVUTE J, (LIEBENBERG J concurring)

[1] The accused was convicted upon his own admission of guilt of contravening s 3 (b) read with sections 1, 3 (ii), 7, 8, 10, 14 and part III of the schedule of Act 41 of 1971, as amended – possession of potentially dangerous dependence producing drugs.

[2] He was sentenced to pay a fine of N\$ 2000 (two thousand Namibian dollars) or to 12 months' imprisonment of which N\$ 1000 (one thousand Namibia dollars) or 6 months is suspended for 3 years on condition that the accused is not convicted of possession of dangerous dependence producing drugs committed during the period of suspension.

[3] I raised a query with the learned magistrate as to whether cannabis is a potentially dangerous dependence producing drug? The learned magistrate replied as follows:

'1. I wish to state to the Honourable Reviewing judge that the charge was defective from the onset and thus subsequently the conviction as well.

2. Possession of cannabis is a prohibited dependence-producing substance, Contravening s 2(b) read with Sections 1,2 (i) and/or 2 (iv)., 8, 10,14 and Part 1 of the schedule of Act 41 of 1971, as amended.

3. I regret the oversight and should the Honourable Reviewing Judge find that the accused was prejudiced in any manner, I stand to be guided by the Honourable Reviewing Judge.'

[4] The schedule to part 1 of the Abuse of Dependence-Producing Substances and Rehabilitation Centres Act 41 of 1971 lists cannabis as a prohibited dependence-producing substance and not a potentially dangerous dependence producing drug. However, the accused was charged with the wrong section and convicted as such.

[5] The accused admitted that he was found in possession of cannabis. In view of this, I do not see any prejudice to be caused to the accused if the conviction is altered to read guilty of possession of prohibited dependence producing substance, contravening s 2 (b) of Act 41 of 1971. It also follows that the sentence imposed cannot be allowed to stand. This court is at liberty to sentence the accused afresh.

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

- a) The conviction is altered to read, guilty of possession of prohibited dependence producing substance, contravening s 2 (*b*) of Act 41 of 1971.
- b) The accused is sentenced to N\$ 1000 (one thousand Namibia dollar) fine or 6 months' imprisonment. The sentence is antedated to 11 May 2018.

NN SHIVUTE
JUDGE

JC LIEBENBERG
JUDGE