

IN THE HIGH COURT OF NAMIBIA

Case Title: The State // <i>Brian Kahuruma</i>	Case No: CR 93/2018
Heard before: Honourable Mr Justice Liebenberg <i>et</i> Honourable Mr Justice Velikoshi, <i>Acting</i>	Division of Court: Main Division Delivered on: 14 December 2018
Neutral citation: <i>S v Kahuruma</i> (CR 93/2018) [2018] NAHCMD 408 (14 December 2018)	
The order: <ol style="list-style-type: none"> The conviction and sentence are confirmed. The order suspending the accused's driver's licence for three (3) months is set aside. The matter is remitted to the magistrate with the direction to explain to the accused the implications of the provisions of s 51 (3) and to invite the accused to make representations before such order is made. 	
Reasons for order:	
LIEBENBERG J (concurring VELIKOSHI J) <ol style="list-style-type: none"> The accused was convicted of contravening s 82(1)(b) r/w ss 1, 86, 89(1) and 89(4) of the Road Traffic and Transportation Act 22 of 1999 (the Act) for driving with an excessive blood-alcohol level. He pleaded guilty and the court found him guilty as charged. He was sentenced to pay a fine of N\$ 2000 or, in default of payment, to 6 (six) months' imprisonment. Coupled with this sentence, the magistrate also suspended his licence for a period of 3 months' as provided for under s 51 of the Act. 	

3. Section 51 of the Act reads as follows:

'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)...

(b)...

(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.'

The accused in this instance was not afforded an opportunity to make representations regarding the suspension of his driver's licence. On review a queried was directed to the magistrate enquiring as to why the accused was not afforded the opportunity to make representations prior to the suspension of his driver's licence.

4. The magistrate conceded that she made a mistake and stated that she stands guided by the court. The provisions of s 51 must first be explained to the unrepresented accused where after he or she must be afforded the opportunity to lead evidence and/or address the court as to the period for which the driving licence should be suspended (See unreported judgment of *S v Heyman* (CR 63/2017) [2017] NAHCMD 317 (8 November 2017)).

5. The conviction and the sentence are in order. However, because the magistrate failed to explain the provisions of s 51 and, in addition, failed to afford the accused the opportunity to make representations, the order cannot be allowed to stand.

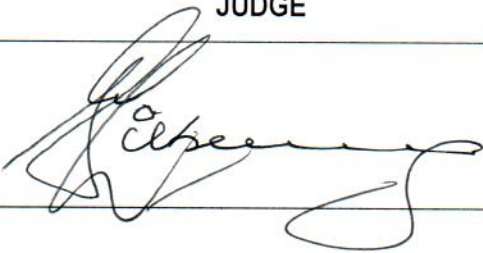
6. In view thereof, the matter is remitted to the magistrate to explain the implications of the provisions of s 51, and then invite the accused to make representations before the court exercises its discretion in this regard.

7. In the result, it is ordered that:

- a) The conviction and sentence are confirmed.
- b) The order suspending the accused's driver's licence for three (3) months is set aside.
- c) The matter is remitted to the magistrate with the direction to explain to the accused the implications of the provisions of s 51 (3) and to invite the accused to make representations before such order is made.

J C LIEBENBERG

JUDGE



I T VELIKOSHI

JUDGE

