

Case Title: <i>The State v John Jao</i>	Case No: CR 03/2019
High Court MD Review No: 1898/2018	Division of Court: Main Division
Heard before: Mr Justice Liebenberg <i>et</i> Ms Justice N N Shivute	Delivered on: 23 January 2019
Neutral citation: <i>S v Jao</i> (CR03/2019) [2019] NAHCMD 03/2019 (23 January 2019)	
The order: <ol style="list-style-type: none"> a) The conviction and sentence are confirmed b) The matter is remitted to the magistrate with the direction to explain to the accused the provisions of section 51(3) of the Road Traffic and Transportation Act 22 of 1999 and to invite the accused to make representations before making an order regarding the suspension of the accused driver's licence. 	
Reasons for order:	
LIEBENBERG J (concurring SHIVUTE J) <ol style="list-style-type: none"> 1. This is a review brought in terms of section 304 (2) of the Criminal Procedure Act 51 of 1977 as amended. 2. The accused was charged in the magistrate's court for the district of Omaruru for driving under the influence of intoxicating liquor which is in contravention of sections 82(1)(a) r/w sections 1,86,89(1) and 89(4) of the Road Traffic and Transportation Act (the Act), 22 of 1999. 	

3. The accused pleaded guilty to the offence and he was sentenced to a fine of N\$ 4000.00 (four thousand Namibian dollars) or, in default of payment, to 12 (Twelve) months' imprisonment of which N\$ 2000.00, or 6 (six) months' imprisonment are suspended for a period of five (5) years on condition that the accused is not convicted of the same offence.

4. The magistrate however did not suspend the accused driver's licence as required by the Act. In his reply to the query, the magistrate stated that the reason he did not suspend the accused driver's licence was because it would have affected his employment. However, he conceded that he made a mistake and thus stood guided by the court.

5. 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. . . issue an order whereby every driving licence held by such person is suspended in accordance with the provisions of subsection.'

6. The conviction and sentence are in order, however, the pre-emptory terms of section 51 (3) should be given effect and the only discretion the magistrate has is with regards to the period of suspension of the accused driver's licence.

7. In view thereof, the matter is remitted to the magistrate to explain the provisions of s 51(3) to the accused.

8. In the result, it is ordered that:

a) The conviction and sentence are confirmed

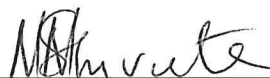
b) The matter is remitted to the magistrate with the direction to explain to the accused the provisions of section 51(3) of the Road Traffic and Transportation Act 22 of 1999 and to invite the accused

to make representations before making an order regarding the suspension of the accused driver's licence.



J CLIEBERG

JUDGE



N N SHIVUTE

JUDGE