



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case no: CR 07/2019

In the matter between:

THE STATE

v

PEUNWELL DITCHABUE

ACCUSED

(HIGH COURT MAIN DIVISION REVIEW REF NO. 1823/2018)

Neutral citation: *S v Ditchabue* (CR 07/2019) [2019] NAHCMD 9 (24 January 2019)

Coram: USIKU, J and UNENGU, AJ

Delivered: 24 January 2019

Flynote: Traffic offence – Reckless or negligent driving and driving under the influence of intoxicating liquor – A duplication of convictions – Conviction and sentence of count 1 confirmed – Conviction and sentence on count 2 set aside.

Summary: The accused was charged with, convicted and sentenced for reckless or negligent driving on count 1 and driving under the influence of intoxicating liquor

as per count 2. The convictions amount to a duplication. Therefore, the conviction and sentence on count 1 – negligent driving are confirmed but the conviction and sentence on count 2 – driving under the influence of intoxicating liquor are set aside.

ORDER

- (i) The conviction of negligent driving in count 1 and the sentence of a fine of N\$2000.00 or 6 months imprisonment in default of payment are confirmed.
 - (ii) The conviction and sentence of count 2 are set aside.
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REVIEW JUDGMENT

UNENGU, AJ (USIKU, J concurring):

[1] This matter came before me on automatic review as provided for by s 302 of the Criminal Procedure Act¹ (the CPA).

[2] The accused in the matter was charged with and convicted of the offence of reckless or negligent driving which is a contravention of s 80(1) read with sections 1, 49, 50, 51, 80(3), 86, 89, 106, 107 and 108 of the Road Traffic Transportation Act² (the Act); and driving under the influence of intoxicating liquor, i.e. contravening s 82(1)(a) read with sections 1, 86, 89(1) and 89(4) of the Act.

[3] Seemingly, these offences were committed simultaneously through one act or conduct on one occasion by the accused.

[4] In the query addressed to the learned magistrate, I asked as to whether it was not a duplication of charges and whether the offences were committed during one

¹ Act 51 of 1977 as amended.

² Act 22 of 1999 as amended.

action with a single intent? In her short response, the magistrate conceded and stated:

'The offences were committed during one action with a single intention at the same occasion. It is indeed a splitting of charges'. I agree. It is rather a duplication of convictions.

[5] I must caution, however, in this jurisdiction the courts are more concerned with duplication of convictions, which must be guarded against.³

[6] It is clear from the answer to questions asked by the magistrate during the questioning in terms of s 112(1)(b) that the accused admitted the elements of negligent driving which could be the cause of the intoxicating liquor, namely the Whisky he consumed prior to him driving the motor-vehicle on the public road.

[7] In the result, the following order is made:

- (i) The conviction of negligent driving in count 1 and the sentence of a fine of N\$2000.00 or 6 months imprisonment in default of payment are confirmed.
- (ii) The conviction and sentence of count 2 are set aside.

E P UNENGU
Acting Judge

D N USIKU
Judge

³ See S v Seibeb and Another and S v Eixab 1997 NR 254 (HC) where test was explained.