

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK
REVIEW JUDGMENT

Case Title: <i>The State v Zaimé Miguel Augustu</i>	CR No.:24/2021
	Division of Court: Main Division
Heard before: Honourable Mr Justice Liebenberg et Honourable Mrs Justice Shivute J	Delivered on: 15 April 2021
Neutral citation: <i>S v Augustu</i> (CR 24/2021) [2021] NAHCMD 158 (15 April 2021)	
<ol style="list-style-type: none">1. The conviction and sentence are set aside.2. The matter is remitted to the trial magistrate in terms of s 312 of the Criminal Procedure Act, 51 of 1977 directing the magistrate to comply with the provisions of section 112 (1)(b) of the Act.3. The magistrate must however take into consideration, the period which the accused spent in custody, in the event of a conviction.	
Reasons for order:	
SHIVUTE J (Liebenberg J concurring): [1] The matter came before this court on automatic review in terms of section 304 of Act 51 of 1977. The accused person pleaded guilty to a charge of driving a vehicle under the influence of intoxicating liquor in contravention of section 82 (1) (a) read with sections 1, 86, 89 (1) and 89 (4) of the Road Traffic and Transportation Act, 22	

of 1999. He pleaded guilty and section 112(1) (b) of the Criminal Procedure Act 51 of 1977 was applied. He was convicted as charged and sentenced to N\$8000 or 3 years' imprisonment.

[2] On review, I directed a query to the magistrate as to why the accused was convicted if he was not asked questions pertaining to the date, month and year when the incident happened as alleged in the charge sheet.

[3] The learned magistrate conceded that there was a futile omission on her part for not questioning the accused as to the date, month and year in which the incident occurred. She further stated that the proceedings are not in accordance with justice and requested that they be quashed.

[4] The primary purpose of questioning the accused in terms of s 112 (1) (b) of the CPA following a plea of guilty, is to safeguard the accused against the result of an unjustified plea of guilty.¹ Moreover, when the court questions the accused, it must ensure that he admits all elements of the offence in such way that it enables the court to conclude for itself whether the accused is guilty of the offence charged. The accused's answers must establish an unequivocal plea of guilty. If there is any doubt, a plea of not guilty should be entered.²

[5] The magistrate correctly concedes that she had erred, hence the conviction and sentence stand to be set aside. The court may only have convicted the accused of the offence charged if satisfied that he admitted all the allegations in the charge. Although the accused admitted other allegations in the charge, he did not admit the date, month and year in which the incident took place. The accused must be brought before the trial court in order to be questioned regarding all the allegations of the offence.

[6] In the result:

1. The conviction and sentence are set aside.
2. The matter is remitted to the trial magistrate in terms of s 312 of the Criminal Procedure Act, 51 of 1977 directing the magistrate to comply with the provisions

¹ *The State v Kandjimi Hiskia Mangundu* (CR 67/2016) [2016] NAHCMD 316 (17 October 2016).

² *S v Combo and Another* 2007 (2) NR 619 (HC).

of section 112 (1)(b) of the Act.

3. The magistrate must however take into consideration, the period which the accused spent in custody, in the event of a conviction.

NN SHIVUTE
JUDGE

J C LIEBENBERG
JUDGE