

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA

“ANNEXURE 11”

Practice Direction

<b>Case Title:</b>  THE STATE  VS  SAMUEL NAOBEB	<b>Case No: CR 35/2022</b>  <b>Division of Court:</b> High Court, Main Division
ACCUSED	<b>Heard before:</b> Honourable Lady Justice Usiku et Claasen, J
	<b>Date of hearing:</b> 25 April 2022
	<b>Delivered on:</b> 10 May 2022
<b>Neutral citation:</b> <i>S v Naobeb</i> (CR 35/2022) [2022] NAHCMD 229 (10 May 2022)	
<b>COURT ORDER</b>	
<ol style="list-style-type: none"><li>1. The convictions and sentences in respect of all counts are confirmed.</li><li>2. The matter is remitted back to Magistrate D. Mukuyu in order to invoke the provisions of section 10(7) of the Arms and Ammunition Act 7 of 1996 and to deal with the matter in accordance with justice.</li></ol>	
<b>REASONS FOR ORDERS:</b>	

[1] The matter before me is an automatic review from the Magistrates' Court in terms of s 302 of the Criminal Procedure Act 51 of 1977.

[2] The accused faced 3 charges, namely Count 1 – dealing in dependence producing substance; Count 2 - possession of a firearm without a license; and Count 3 - possession of ammunition to which he pleaded not guilty. After a trial he was convicted on all the charges where after he was sentenced to 4 years imprisonment part of which was suspended for 3 years on certain conditions in respect of count 2 and 3.

[3] The accused was ordered to pay a fine of N\$ 10 000 or 24 months imprisonment and N\$5000 or 12 months imprisonment respectively in respect of count 2 and 3.

[4] When the review was submitted to me, I directed the following query to the learned magistrate:

'Can the learned magistrate explain why the provisions of s 10(7) of the Arms and Ammunition Act 1996, was not brought to the accused's attention as required in respect of counts 2 and 3?'

[5] The learned magistrate responded:

'I concede, it was an oversight on my part and I apologize.'

[6] The concession made by the learned magistrate is correct, as s 10(7) of the Arms and Ammunition Act 7 of 1996 is peremptory in nature. It places an obligation on the magistrate to enquire from the convicted person why he / she should not be declared unfit to possess a firearm and advance reasons to the magistrate.<sup>1</sup>

[7] The provisions of s 10(7) must be complied with, it is directed that the accused shall be summoned in order for the learned magistrate to inform him about such provisions which are pre-emptory in nature and for the accused to give reasons why he should not be declared to be unfit to possess a firearm for a specified period of time. It must be noted that these provisions are often being ignored by magistrates despite

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<sup>1</sup> See *S v Matroos* (CR 24/2020) [2020] NAHCMD 175 (11 May 2020).

numerous review judgment on the topic.<sup>2</sup>

[8] In light of the reasons above, I make the following order:

8.1. The convictions and sentences in respect of all counts are confirmed.

8.2. The matter is remitted back to Magistrate D. Mukuyu in order to invoke the provisions of section 10(7) of the Arms and Ammunition Act 7 of 1996 and to deal with the matter in accordance with justice.

<b>D USIKU</b> <b>JUDGE</b>	<b>C CLAASEN</b> <b>JUDGE</b>

<sup>2</sup> *S v Stefanus; S v Johannes* (CR 20& 21 – 2013) [2013] NAHCMD 74 (19 March 2013);  
*S v Mbalulu* (CR 24/2012) [2012] NAHCNLD 04 (31 October 2012).