

REPUBLIC OF NAMIBIA

HIGH COURT OF
WINDHOEK
REVIEW JUDGMENT



NAMIBIA MAIN DIVISION,

Case Title: The State v Obby Maibwe	e No: 129/2022
Heard before: Hon. Judge Liebenberg <i>et</i> Hon. Judge Shivute	Division of Court: Main Division
Delivered on: 28 November 2022	
Neutral citation: <i>S v Maibwe</i> (CR 129/2022) [2022] NAHCMD 644 (28 November 2022)	
The order: a. The conviction and sentence are confirmed. b. The matter is remitted to the Magistrate Court, in order to re-summon the accused and for the court to invoke the provisions of section 51(1) of the Road Traffic and Transport Act 22 of 1999.	
Reasons for order:	
SHIVUTE J (LIEBENBERG J concurring): [1] The accused was charged in the Magistrate Court in the district of Katima Mulilo with contravening section 82(1)(a) of the Road Traffic and Transport Act 1999 (the Act) read with sections 1, 49, 50, 51, 82(8), 86, 89 and 106 of the said Act- Driving under the influence of Intoxicating liquor. The accused pleaded guilty and the court applied section 112(1)(b) of the Criminal Procedure Act 51 of 1977 (CPA). During questioning, the accused disputed some allegations and the magistrate entered a plea of not guilty in terms of section 113 of the CPA. The matter proceeded to trial and the accused was then	

convicted after evidence was presented. He was subsequently sentenced to a fine of N\$3000 or three months' imprisonment.

[2] A query was directed to the magistrate to enquire why the court failed to invoke the provisions of section 51(1)(c) of the Act.

[3] The magistrate in his response conceded that he should have invoked the provisions of section 51(1)(c) of the Act.

[4] The magistrate failing to apply section 51(1)(c) of the Act is an irregularity as the Act makes the application of the provision mandatory. *State v Tjipeuja* stated the following: 'The provisions of section 51(1) of Act 22 of 1999 are peremptory and must be complied with.'¹

[5] The conviction and sentence are in accordance with justice and are confirmed however the magistrate needs to comply with the provisions of section 51 of the Act.

[6] In the result the following order is made:

- a. The conviction and sentence are confirmed.
- b. The matter is remitted to the Magistrate Court, in order to re-summon the accused and for the court to invoke the provisions of section 51(1) of the Road Traffic and Transport Act 22 of 1999.

N N SHIVUTE	J C LIEBENBERG
Judge	Judge

¹ *The State v Tjipeuja* (CR 2/2017) [2017] NAHCMD 4 (20 January 2017).