

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION WINDHOEK

REVIEW JUDGMENT

PRACTICE DIRECTION 61

<b>Case Title:</b> The State v Chisha Simutowe John	<b>Case No:</b> CR 06 /2023
<b>High Court MD Review No:</b> 1934 /2022	<b>Division of Court:</b> Main Division
<b>Heard before:</b> Hon Judge Usiku et Hon Judge Claasen	<b>Delivered on:</b> 27 January 2023
<b>Neutral citation:</b> <i>S v John</i> (CR 06 /2023) [2023] NAHCMD 16 (27 January 2023)	
<b>The order</b>  a) The conviction is confirmed. b) The sentence is altered to read as follows: Accused to pay a fine of N\$ 1000 or 3 months' imprisonment. The sentence is backdated to 28 October 2022.	
<b>Reasons for order:</b>	
CLAASEN J (concurring USIKU J)	

[1] The matter appears before us on automatic review. The accused was convicted of contravening s 64(a) of the Road Traffic and Transportation Act, No 22 of 1992 (the RTTA) in the district court of Rundu. He was sentenced to pay a fine of N\$4000 or 6 months' imprisonment.

[2] The accused was properly convicted but there is a slight problem with the sentence that was imposed.

[3] Section 106(7) of the RTTA provides for a sentence not exceeding N\$ 2 000 or to imprisonment for a period not exceeding six months' imprisonment or to both such fine and such imprisonment.

[4] After having directed a query to magistrate about the sentence, he promptly replied and conceded that the punishment should have been in line with the prescribed penalty clause.

[5] For that reason the sentence cannot be allowed to stand.

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

a) The conviction is confirmed. .

b) The sentence is altered to read as follows:

Accused to pay a fine of N\$ 1000 or 3 months' imprisonment. The sentence is backdated to 28 October 2022.

**C M CLAASEN**  
**JUDGE**

**D N USIKU**  
**JUDGE**

