

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA
REVIEW JUDGMENT
PRACTICE DIRECTIVE 61

Case Title: The State v Joseph Kambinda Ndala Accused	Case No: CR 51/2023 Division of Court: High Court, Main Division
Heard before: January J et D Usiku J	Date of hearing: 27 April 2023 Delivered on: 27 April 2023
Neutral citation: <i>S v Ndala</i> (CR 51-2023) [2023] NAHCMD 227 (27 April 2023)	
ORDER	
1. The payment of the admission of guilt is set aside. 2. The fine in the amount of N\$2000 paid as admission of guilt, is to be refunded to the accused herein. 3. The matter is remitted back to the magistrate, to hear and finalise same.	
REASONS FOR ORDERS:	

D Usiku J (January J concurring):

[1] This case is before us not in the ordinary course of review, but in terms of section 304(4) of the Criminal Procedure Act 51 of 1977, as amended. The matter was referred to this Court by the head of office of the Rundu Magistrate's Court with a recommendation that the admission of guilt fine be set aside and the matter be referred back to the learned magistrate to finalise it.

[2] The bundle that was placed before the review court comprised of the original admission of guilt receipt, an affidavit by the accused, a letter by the Head of Office of the Rundu Magistrates' Court, a letter by the clerk who checked the record and referred accused to the revenue office, a letter by the clerk that received the payment and a letter by the public prosecutor.

[3] The accused person was charged with contravening regulation 7(1)(a)(1) of the Proclamation of State of Emergency. The accused pleaded not guilty to the charge on 6 November 2020 and the matter was subsequently postponed to 16 December 2020 for trial.

[4] Upon resumption, the matter did not proceed, and was postponed again to a further date.

[5] On 22 December 2022, after various postponements, accused person paid an admission of guilt fine in the amount of N\$2000 despite having pleaded not guilty to the charge.

[6] It is trite that admission of guilt fine can only be made before the accused person pleads to the charge.¹ Once the accused person has pleaded to the charge, he can no longer pay an admission of guilt fine.

[7] According to the accused, he consulted with the public prosecutor to enquire whether he could pay an admission of guilt fine. The prosecutor informed him that

¹ S 57(a) Criminal Procedure Act 51 of 1977, as amended.

he could pay an admission of guilt fine even though he has already pleaded to the charge during his second appearance. He was further advised by the prosecutor to return to court on 9 January 2023 in order to have the matter to be struck from the roll. Accused, however, proceeded to the clerk of court and paid an admission of guilt fine in the amount of N\$ 2000.

[8] From the record of proceedings, it is clear that the prosecutor did not go through the record before advising the accused person to pay the admission of guilt fine. The prosecutor conceded that the accused had pleaded not guilty on his second appearance, therefore the withdrawal of the case was no longer possible. The admission of guilt fine should to be set aside.

[9] In the result, the following orders are made:

1. The payment of the admission of guilt is set aside.
2. The fine in the amount of N\$2000 paid as admission of guilt fine is to be refunded to the accused herein.
3. The matter is remitted back to the magistrate, to hear and finalise same.

D USIKU JUDGE	H C JANUARY JUDGE