

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

PRACTICE DIRECTION 61

Case Title: The State v Fillemon Kalenga	Case No: CR 37/2024
High Court MD Review No.: 456/2024	Division of Court: High Court, Main Division
Heard before: Shivute J et January J	Delivered on: 16 May 2024
Neutral citation: <i>S v Kalenga</i> (CR 37/2024) [2024] NAHCMD 230 (16 May 2024)	
The order: <ol style="list-style-type: none">1. The conviction and sentence are confirmed.2. The order that the accused's driving licence is suspended for a period of three months from date of sentence is confirmed.3. The order that the accused is barred from applying for a driving licence for a period of three months from date of sentence is set aside.	

Reasons for order:

SHIVUTE J (JANUARY J concurring):

[1] This is a review matter which came before me in terms of section 302(1) of the Criminal Procedure Act 51 of 1977 as amended (the CPA).

[2] The accused appeared in the Okahandja Magistrate's Court on a charge of contravening section 82(5)(a) read with sections 1, 82(6), 82(7), 86, 89 (1) and 89(4) of the Road Traffic and Transport Act 22 of 1999 (the Act). The accused was subsequently convicted as charged and sentenced to a fine of N\$4000 or three (3) months' imprisonment and suspension of his driving licence for a period of three (3) months as well as declaring the accused barred from applying for a driving licence for three (3) months as of date of sentence.

[3] When the matter came before me on review, I queried the presiding magistrate on why the court did not invoke the provisions of section 51(1) of the Act, considering that the accused was convicted of driving with an excessive breath alcohol level, contravening section 82(5)(a) read with sections 1, 82(6), 82(7), 86, 89(1) and 89(4) of the Act.

[4] In reply to the query, the magistrate responded that it was an error on his part and that he seeks guidance from this court. When the review record was returned with the magistrate's reply, I realized that it reflects that in mitigation before sentencing, the accused himself asked for his driving licence to be suspended for three months. Accordingly, the accused was aware of the required suspension of the driver's licence and therefore, the court a quo need not have warned the accused in terms of section 51(1) of the Act.

[5] However, on further reading of the record, I realized that the court a quo, in addition to having suspended the accused's driving licence, ordered that the accused is barred

from applying for a driving licence for three months from date of sentence.

[6] Both orders cannot be allowed to stand because the Act differentiates between drivers with and those without a driving licence. Section 51(1) caters for licensed drivers and requires suspension of the driving licence upon conviction, while section 51(3) caters for unlicensed drivers and makes it mandatory for the court to declare the accused disqualified from obtaining a learner's or driving licence. Since the accused himself requested for his driving licence to be suspended, it can only be inferred from such a request that he was a holder of a driving licence.

[7] In the result, it is ordered:

1. The conviction and sentence are confirmed.
2. The order that the accused's driving licence is suspended for a period of three months from date of sentence is confirmed.
3. The order that the accused is barred from applying for a driving licence for a period of three months from date of sentence is set aside.

N N SHIVUTE JUDGE	H C JANUARY JUDGE