

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION

HELD AT OSHAKATI

REVIEW JUDGMENT

Case no: CR 11/2018

THE STATE

APPLICANT

v

PAULUS DAVID

RESPONDENT

(HIGH COURT NLD REVIEW CASE NO.: 119/2018)

THE STATE

APPLICANT

v

MATATIAS SHINDONDOLA AMUSOKO

RESPONDENT

(HIGH COURT NLD REVIEW CASE NO.: 120/2018)

THE STATE

APPLICANT

v

RUAN SWIEGERS

RESPONDENT

(HIGH COURT NLD REVIEW CASE NO.: 121/2018)

Neutral citation: *S v David; S v Amusoko; S v Swiegers* (CR 11/2018) [2018]
NAHCNLD 15 (14 February 2018)

Coram: ANGULA DJP *et* TOMMASI J

Delivered: 14 February 2018

Flynote: Criminal procedure – Plea – Plea of guilty – Conviction in terms of s 112(1)(a) of Criminal Procedure Act – Magistrate cannot sentence such accused to direct imprisonment.

ORDER

S v Paulus David (Case No.: OSH-CRM 6998/2017):

1. The convictions in respect of count 1 (Contravening section 31(1)(a) of the Road Traffic and Transport Act, 1999 (Act 22 of 1999) and count 2 (contravening section 55(1) of the Criminal Procedure Act, 1977 (Act 51 of 1977) are confirmed.
2. The sentence imposed in respect of count 1 is hereby set aside and substituted with the following sentence:

The accused is sentenced to a fine N\$500 or in default of payment, 2 months' imprisonment wholly suspended for 1 year on condition that the accused is not convicted of contravening section 31(1)(a) of the Road Traffic and Transport Act, 1999 (Act 22 of 1999).

3. The sentence in respect of count 2 is confirmed.

S v Matatias Shindondola Amusoko (Case No.: OSH-CRM 8784/2017):

1. The convictions in respect of count 1 (Contravening regulation 48(b)(c) of the Road Traffic and Transport Regulations and count 2 (contravening section 55(1) of the Criminal Procedure Act, 1977 (Act 51 of 1977)) are confirmed.
2. The sentence imposed in respect of count 1 is hereby set aside and substituted with the following sentence:

The accused is sentenced to a fine N\$500 or in default of payment, 2 months' imprisonment wholly suspended for 1 year on condition that the accused is not convicted of contravening regulation 48(b)(c) of Road Traffic and Transport Regulations.

3. The sentence in respect of count 2 is confirmed.

S v Ruan Swiegers (Case No: OSH-CRM 8878/2017):

1. The convictions in respect of count 1 (contravening regulation 342(1)(a)(b) and (c) of the Road Traffic and Transport Regulations and count 2 (contravening section 55 (1) of the Criminal Procedure Act, 1977(Act 51 of 1977)) are confirmed.
2. The sentence imposed in respect of count 1 is hereby set aside and substituted with the following sentence:

The accused is sentenced to a fine N\$2000 or in default of payment, 2 months' imprisonment wholly suspended for 1 year on condition that the accused is not convicted of contravening regulation 342(1)(a) of Road Traffic and Transport Regulations.

3. The sentence in respect of count 2 is confirmed.

JUDGMENT

TOMMASI J (ANGULA DJP concurring):

[1] All three matters came before us a special reviews in terms of section 304(4) of the Criminal Procedure Act, 1977 (Act 51 of 1977) under cover of a letter from the district court sitting at Oshakati.

[2] In the matter of *S v Paulus David* (Case No.: OSH-CRM 6998/2017) the accused was convicted of driving a motor vehicle without a driver's license in contravention of section 31(1)(a) of the Road Traffic and Transport Act, 1999 (Act 22 of 1999) (count 1) and contempt of court (count 2). He was sentenced to a fine of N\$500 or in default of payment, 2 months' imprisonment plus a further 10 days imprisonment in respect of count 1 and N\$300 or 30 days imprisonment in respect of count 2.

[3] In the matter of *S v Matatias Shindondola Amusoko* (Case No.: OSH-CRM 8784/2017) the accused was convicted of failing to affix a number plate to the front and back of the motor vehicle he was driving in contravention of regulation 48(b)(c) of the Road Traffic and Transport Regulations (count 1) and contempt of court (count 2). He was sentenced to a fine of N\$500 or in default of payment, 2 months' imprisonment plus a further 10 days imprisonment in respect of count 1 and N\$300 or 30 days imprisonment in respect of count 2.

[4] In the matter *S v Ruan Swiegers* (Case No.: OSH-CRM 8878/2017) the accused was convicted of driving a motor vehicle while holding a communication device in his hand i.e contravening regulation 342(1)(a) of the Road Traffic and Transport Regulations (count 1) and contempt of court (count 2). He was sentenced to pay a fine of N\$2000 or in default of payment to 6 months' imprisonment plus a further 10 days imprisonment in respect of count 1 and a fine of N\$100 or 20 days' imprisonment in respect of count 2. The accused in this matter appealed the decision but withdrew the appeal in view of the fact that the matter was sent for a special review.

[5] The convictions in respect of contravening section 55(1) (failing to appear on a notice) and the sentence imposed in respect hereof are in order and will be confirmed.

[6] All of the above accused were brought before court on warrants of arrest, all pleaded guilty to the main counts and the second counts and all were convicted in terms of the provisions of section 112(1)(a) on both counts. The learned magistrate could not impose a sentence of imprisonment in terms of a conviction under s 112(1)(a), (see *S v Aludhilu* 2007 (1) NR 70 (HC)).

[7] The learned magistrate recognized the mistake and the matter was referred to this court for review on an urgent basis to ameliorate the prejudice to the accused herein. Despite this fact the accused had already spent some time in custody as they were sentenced on 12 February 2018.

[8] This court is of the view, given the time spent in custody that justice will not be served by merely setting aside the term of imprisonment. An appropriate sentence under the circumstances would be to wholly suspend the sentences imposed by the magistrate.

[9] In the result, the following order is made:

S v Paulus David (Case No.: OSH-CRM 6998/2017):

1. The convictions in respect of count 1 (Contravening section 31(1)(a) of the Road Traffic and Transport Act, 1999 (Act 22 of 1999) and count 2 (contravening section 55(1) of the Criminal Procedure Act, 1977 (Act 51 of 1977) are confirmed.
2. The sentence imposed in respect of count 1 is hereby set aside and substituted with the following sentence:

The accused is sentenced to a fine N\$500 or in default of payment, 2 months' imprisonment wholly suspended for 1 year on condition that the accused is not convicted of contravening section 31(1)(a) of the Road Traffic and Transport Act, 1999 (Act 22 of 1999).

3. The sentence in respect of count 2 is confirmed.

S v Matatias Shindondola Amusoko (Case No.: OSH-CRM 8784/2017):

1. The convictions in respect of count 1 (Contravening regulation 48(b)(c) of the Road Traffic and Transport Regulations and count 2 (contravening section 55(1) of the Criminal Procedure Act, 1977 (Act 51 of 1977)) are confirmed.
2. The sentence imposed in respect of count 1 is hereby set aside and substituted with the following sentence:

The accused is sentenced to a fine N\$500 or in default of payment, 2 months' imprisonment wholly suspended for 1 year on condition that the accused is not convicted of contravening regulation 48(b)(c) of Road Traffic and Transport Regulations.

3. The sentence in respect of count 2 is confirmed.

S v Ruan Swiegers (Case No: OSH-CRM 8878/2017):

1. The convictions in respect of count 1 (contravening regulation 342(1)(a)(b) and (c) of the Road Traffic and Transport Regulations and count 2 (contravening section 55 (1) of the Criminal Procedure Act, 1977(Act 51 of 1977)) are confirmed.
2. The sentence imposed in respect of count 1 is hereby set aside and substituted with the following sentence:

The accused is sentenced to a fine N\$2000 or in default of payment, 2 months' imprisonment wholly suspended for 1 year on condition that the accused is not convicted of contravening regulation 342(1)(a) of Road Traffic and Transport Regulations.

3. The sentence in respect of count 2 is confirmed.

M A Tommasi
Judge

H Angula
Deputy-Judge President