

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION  
HELD OSHAKATI  
REVIEW JUDGMENT

Case no: CR 4/2018

THE STATE

v

GREGORY TSHIGULIO TALIMANGUKIKA

ACCUSED

(High Court Case no. 113/2016)

**Neutral citation:** *State v Talimangukika* (CR 4/2018) [2018] NAHCNLD 4 (25 January 2018)

**Coram:** TOMMASI J *et* JANUARY

**Delivered:** 25 January 2018

**Flynote:** Bail — Failure of accused on bail to appear in court on appointed day —Such accused cannot be convicted for having failed to appear on the appointed date —Section 67 of Criminal Procedure Act 51 of 1977 providing that accused under these circumstances to forfeit bail.

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ORDER

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1. The conviction of dealing in a dependence-producing substance (dagga) in contravention of section 2(a) of Act 41 of 1971, as amended, and sentence are confirmed.
2. The conviction for having failed to attend court and the sentence of N\$300 or 3 months' imprisonment are set aside.

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## JUDGMENT

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TOMMASI J (JANUARY J concurring):

[1] This matter came before me on automatic review.

[2] The accused was convicted of dealing in dagga in contravention of section 2(a) of Act 41 of 1971 as amended and was sentenced to pay a fine of N\$2000 or in default of payment, to 1 year imprisonment. The accused pleaded guilty. Both the conviction and sentence are in accordance with justice and may be confirmed.

[3] During the proceedings, the learned magistrate conducted a summary inquiry into the absence of the accused having failed to appear on a date to which the matter was adjourned. These proceedings, for reasons set out below, are irregular proceedings.

[4] The accused was released on bail and he failed to appear on a date to which the matter was adjourned. He appeared in court after a few months. The court held a summary inquiry into the reasons for his absence. The learned magistrate was not satisfied with the accused's explanation and convicted the accused of failing to attend court. He was sentenced to pay a fine of N\$300 or three months imprisonment.

[5] The learned magistrate was requested to explain why an inquiry was done in view of the fact that the accused was released on bail and not warned by the court in terms of section 72. The magistrate conceded that this was irregular and indicated that the fine which was paid by the accused may be returned to him.

[6] It is trite that an accused who has been released on bail is not subject to further enquiry or conviction (e.g. for contempt of court) at later date when he appears. (See *S v Paulus* 2007 (2) NR 622 (HC)). The accused is called upon to

satisfy the court within the specified period that his failure to appear was not due to fault on his part. If he does not satisfy the court his bail may be cancelled and the bail monies shall be forfeited. (*Also see S v Ndakolute* 2005 NR 37 (HC). *S v Swartbooi* 1990 NR 389 (HC)).

[7] The entire procedure adopted by the learned magistrate is irregular and the conviction of having failed to attend court and sentence stand to be set aside.

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

1. The conviction of dealing in a dependence-producing substance (dagga) in contravention of section 2(a) of Act 41 of 1971, as amended, and sentence are confirmed.
2. The conviction for having failed to attend court and the sentence of N\$300 or 3 months' imprisonment are set aside.

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MA TOMMASI J  
Judge

I agree,

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HC JANUARY  
Judge