

**REPUBLIC OF NAMIBIA**



**HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION  
HELD AT OSHAKATI**

**REVIEW JUDGMENT**

**CR No: 6/2018**

In the matter between:

**THE STATE**

v

**WILHELM JONAS WEYULU**

**ACCUSED**

HIGH COURT NLD REVIEW CASE REF NO: **319/2017**

**Neutral citation:** *S v Weyulu* (CR 6/2018) [2018] NAHCNLD 7 (25 January 2018)

**Coram:** TOMMASI J and JANUARY J

**Delivered:** 25 January 2018

**Flynote:** Review – Criminal Procedure – Plea of guilty – Section 112(1)(b) applied – Accused only admitted to have driven without a driver’s licence – He admitted that he drove negligently but did not admit the manner in which he drove to make him liable to negligence –The magistrate could not have been satisfied that the accused is guilty – section 113 of the CPA should have been applied – Matter remitted.

**Summary:** The accused pleaded guilty for negligent driving of a motor cycle. Upon questioning by the magistrate in accordance with s 112(1)(a) of the CPA, it emerged that he considered himself negligent because he was driving without a driver's licence to drive the motor cycle. The record does not reflect the manner in which he drove negligently. The magistrate could not have been satisfied that the accused is guilty. A plea of not guilty should have been entered in terms of s 113 of the CPA. The conviction and sentence are set aside. The matter is remitted to the magistrate.

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### ORDER

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1. The conviction and sentence are set aside;
2. The matter is remitted to the magistrate to deal with the matter in accordance with section 113 of the CPA.

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### JUDGMENT

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**JANUARY J** (TOMMASI J concurring)

[1] The accused was charged and convicted of reckless or negligent driving in contravention of section 80(1) read with sections 1, 86, 106(6)(a), (b) and 108 of Act 22 of 1999. He pleaded guilty and the magistrate questioned him in terms of section 112(1)(b) of the Criminal Procedure Act, Act 51 of 1977. He was sentenced to N\$2500 or 6 months imprisonment.

[2] The record reflects amongst other the following:

'Q: Forced or persuaded to plead guilty?

A: No

Q: Why pleading guilty?

A: I drove negligently

Q: What did you drive negligently?

A: A motor cycle

Q: What do you mean that you were driving negligently?

A: Because I did not have a valid document, a licence for the vehicle I was driving...

Q: You understand that the charge is negligent driving?

A: Yes

Q: And you said that you were negligent by driving without papers?

A: Yes

Q: Why do you say so?

A: Because I don't have valid documents to drive such a motor vehicle

Q: Did you know that by doing so that this was wrong, unlawful and punishable by a court of law?

A: I knew

CRT: Court is satisfied, you are found guilty as charged

PP: No previous convictions'

[3] It is clear from the record that the accused made no admission of negligent driving and did not at all allude to the manner in which he was driving. He was not charged with the offence of driving without a license. It appears that the magistrate accepted that he was negligent because he drove without a licence. This is clearly a misdirection. The relevant act does not make provision that a person who drives without a licence is negligent nor created any presumption to that effect. In my view, a person driving a motor vehicle may have the necessary skill to drive a motor vehicle without being negligent.

[4] I agree with Cooper, *Motor Law* where he states in dealing with reckless or negligent driving as follows:

'Having regard to this statutory injunction (which is a recognition of the approach the court have always adopted in the determination of reckless and negligent driving) section 138(1) is contravened, it is submitted, if a vehicle is driven in a manner which is an actual or potential danger to persons or property actually on or which could

reasonably have been expected to be upon the road at the time in question.<sup>1</sup> (my underlining)

Section 138(1) of the Road Traffic Ordinance 30 of 1967 was the applicable law before Act 22 of 1999 was enacted. The section reads as follows: 'A person who drives a vehicle on a public road recklessly or negligently commits an offence.'

[5] Section 80 of Act 22 of 1999 reads:

**'80 Reckless or negligent driving**

(1) No person shall drive a vehicle on a public road recklessly or negligently.

(2) Without restricting the ordinary meaning of the word "recklessly" any person who drives a vehicle in wilful or wanton disregard for the safety of persons or property shall be deemed to drive that vehicle recklessly.

(3) In considering whether an offence has been committed under subsection (1), the court shall have regard to all the circumstances of the case including, but without prejudice to the generality of the foregoing provisions of this section, the nature, condition and use of the public road on which the offence is alleged to have been committed, the amount of traffic which at the time actually was, or could reasonably have been expected to be, upon that road and the speed at and manner in which the vehicle was driven.' (my emphasis)

[6] The magistrate could not have been satisfied that the accused is guilty of negligent driving and should have entered a plea of not guilty in accordance with section 113 of the CPA and instructed the prosecutor to proceed with a trial. The conviction and sentence therefore stand to be set aside.

[7] In the result:

1. The conviction and sentence are set aside;
2. The matter is remitted to the magistrate to deal with the matter in accordance with section 113 of the CPA.

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<sup>1</sup> See W E Cooper *Motor Law* Vol 1 1982 p 517.

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**H C JANUARY**

**Judge**

I agree

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**M A TOMMASI**

**Judge**