

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION, OSHAKATI

REVIEW JUDGMENT

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| Case Title: <i>The State v Tobias Ndakalako Shihepo</i> | Case No: CR 44/2019 |
| | Division of Court: Northern Local Division |
| Heard before: Honourable Mr. Justice January J et Honourable Ms. Justice Salionga J | Delivered on: 16 December 2019 |
| Neutral citation: <i>S v Shihepo</i> (CR 44/2019) [2019] NAHCNLD 143 (16 December 2019) | |
| The order: <ol style="list-style-type: none">1. The conviction of contravening section 82(1)(b) read with sections 1, 86, 89(1) and 89(4) of the Road Traffic and Transportation Act, Act 22 of 1999 – Driving with an excessive blood-alcohol level is set aside and substituted with a conviction of section 82(5) read with sections 1, 86, 89(1) and 89(4) of the Road Traffic and Transportation Act, Act 22;2. The sentence of N\$3000 or 12 months imprisonment is confirmed. | |
| Reasons for order: | |
| JANUARY J (SALIONGA J concurring): <ol style="list-style-type: none">1. The accused was charged with the wrong section of the Road Traffic and Transportation Act, Act 22 of 1999. Section 82(1) (b) relates to Drunken Driving and | |

not driving with an excessive blood-alcohol level.

2. 'As a general rule, an accused should not be allowed to escape conviction only as a result of the prosecution's F attachment of an incorrect 'label' to a statutory offence or an erroneous reference to the applicable statutory provision which has allegedly been contravened.

“(The) principle is that, if the body of the charge is clear and unambiguous in its description of the act alleged against the accused, e.g., where the offence is a statutory and not a common-law offence and the offence is correctly described in the G actual terms of the statute, the attaching of a wrong label to the offence or an error made in quoting in the charge the statute or statutory regulation alleged to have been contravened, may be regarded as an error not fatal to the charge. Hence, in circumstances such as those, an error of that nature may be corrected on review, if the Court is satisfied that the conviction is in accordance with justice, or, on appeal, if it is satisfied that no failure of justice has, in fact, resulted H therefrom.”

(Per Henochsberg J in *R v Ngcobo; R v Sibega* 1957 (1) SA 377 (N) at 381B - D.)¹

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| H C JANUARY JUDGE | J T SALIONGA JUDGE |

¹ *S v Somses* 1999 NR 296 (HC) at 297 F-G