

REPUBLIC OF NAMIBIA



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

REVIEW JUDGMENT

Case Title: <i>S v Epharas Ngundhi Mupopiwa</i>	CR NO.: 2/2020
	Division of Court: Northern Local Division
Heard before: Honourable Mr Justice January J et Honourable Ms Justice Salionga J	Delivered on: 13 January 2020
Neutral citation: <i>S v Mupopiwa</i> (CR 2/2020) [2020] NAHCNLD 02 (13 January 2020)	
IT IS ORDERED THAT: <ol style="list-style-type: none">1. The conviction and sentence are set aside;2. The matter is remitted to the magistrate with a direction that it be dealt with afresh from the stage of plea;3. In the event of a conviction, the sentencing court must have regard to the sentence already served and/or the fine already paid.	
Reasons for the above order:	
SALIONGA J (JANAURY J concurring):	

[1] The accused person aged 48 years old, was charged with contravening section 140(1)(a) of the Road Traffic Ordinance 1967 as amended, driving under the influence of liquor. The particulars of the offence are that upon or about the 15 July 2018 and on a public road, namely Omakange - Opuwo in Opuwo district the accused drove a vehicle with registration number N 6451 EN while under the influence of intoxicating liquor or a drug having a narcotic effect with a concentration level of 1.13 mg/l on an alcohol breathalyzer test.

[2] Accused pleaded guilty to the charge, section 112(1)(a) of Act 51 of 1977 was applied and was convicted upon his own admission of guilt. He was sentenced to a fine of three thousand dollars (N\$ 3000) or two (2) years imprisonment.

[3] The matter was submitted before my brother Namweya Acting Judge (who in the meantime left the service) on automatic review in terms of section 302 of Act 51 of 1977. He directed a query to the trial magistrate that the crime of driving under the influence of liquor is not a minor offence, could the magistrate have invoked the provision of section 112(1) (a) of Act 51 of 1977 in convicting the accused?

[4] The learned magistrate in her reply conceded that section 112(1)(b) of the Act should have been applied stating it was an oversight on his part.

[5] The idea behind s 112(1) (a) of the Act is for the court to speedily dispose of minor offences see *S v Aniseb and Another*¹. In *casu* the crime of driving under the influence of liquor is not a minor offence and section 112(1) (b) should be invoked.

[6] In the result:

1. The conviction and sentence are set aside;
2. The matter is remitted to the magistrate with a direction that it be dealt with afresh from the stage of plea;

¹ 1991 NR 203 (HC), 1991 (2) SACR 413) at 415g – i.

3. In the event of a conviction, the sentencing court must have regard to the sentence already served and/or the fine already paid.	
J T SALIONGA JUDGE	H C JANUARY JUDGE