



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

**REVIEW JUDGMENT**

Case No.: CR 35/2020

In the matters between:

**THE STATE**

v

**AIYEHOLA KRISTOFERIUS SHIPANGENI**

HIGH COURT NLD REVIEW CASE REF NO: (737/2019)

**Neutral citation:** *S v Shipangeni* (CR 35/2020) [2020] NAHCNLD 72 (22 June 2020)

**Coram:** JANUARY J and SALIONGA J

**Delivered:** 22 June 2020

**Flynote:** Criminal procedure – Section 51 of the Road Traffic and Transportation Act 22 of 1999 – Obligatory suspending of driving licence upon conviction of certain offences – Accused was convicted of contravening s 80 (1) – Reckless driving – Not sure accused a holder of a driving licence – Accused to be afforded opportunity to address Court as to why such an order should not be made.

**Summary:** The case came before me on automatic review. The accused was convicted for reckless driving in contravention of section 80(1) of the Road Transportation and Traffic Act, Act 22 of 1999 (the Act). I raised a query why the magistrate did not suspend the driver's license when it is peremptory in accordance with section 51 of the Act. The magistrate conceded that it was an oversight on her side.

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### ORDER

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1. The conviction and sentence are confirmed.
2. The matter is remitted to the magistrate in terms of section 304(2)(c)(v) of the Criminal Procedure Act 51 of 1977 to enable the court to explain to the accused the implications of the provisions of section 51 of the Road Traffic and Transportation Act 22 of 1999 and to invite the accused to make representations as to why his driver's licence should not be suspended before such an order is made.

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### JUDGMENT

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JANUARY J (SALIONGA J concurring):

*Introduction*

[1] The accused was charged with reckless or negligent driving in contravention of section 80(1) read with sections 1, 86, 106(a), 106(b) and 108 of Act 22 of 1999. He pleaded not guilty but was eventually convicted for reckless driving. He was sentenced to N\$6000 or 18 months imprisonment.

[2] The matter came before me on automatic review in terms of section 302 of the Criminal Procedure Act, Act 51 of 1977. I raised a query to the magistrate in the following terms referring inadvertently to the Criminal Procedure Act whereas it is the Road Traffic and Transportation Act 22 of 1999:

1. 'Section 51 of the Criminal Procedure Act, Act 51 of 1977 stipulates amongst others as follows:

**“51 Suspension of licence upon conviction of certain offences**

(1) Where a person who is the holder of a driving licence is convicted by a court of an offence-

(a) under section 78(1)(a), (b) or (c) in the case of an accident which resulted in the death or injury of a person;

(b) under section 80(1) of driving a vehicle recklessly; or

(c) under section 82(1), (2), (5) or (9),

the court shall, apart from imposing a sentence and except if the court under section 50(1)(a) issues an order for the cancellation of the licence, issue an order whereby every driving licence held by such person is suspended in accordance with the provisions of subsection (2).” (my emphasis)

2. The magistrate must explain why she did not comply with the peremptory section whereas it is copied on the annexure setting out the charge.’

[3] The magistrate responded and conceded that it was an oversight on her part.

[4] In the result:

1. The conviction and sentence are confirmed.
2. The matter is remitted to the magistrate in terms of section 304 (2) (c) (v) of the Criminal Procedure Act 51 of 1977 to enable the court to explain to the accused the implications of the provisions of section 51 of the Road Traffic and Transportation Act 22 of 1999 and to invite the accused to make representations as to why his driver’s licence should not be suspended before such an order is made.

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H C JANUARY

Judge

I agree,

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J T SALIONGA

Judge