

REPUBLIC OF NAMIBIA



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

<b>Case Title:</b> <i>S v Karukombe Tuvetyavere</i>	<b>CR NO: 3/2022</b> Review No: Ruacana 82/2020
	<b>Division of Court:</b> Northern Local Division
<b>Heard before:</b> Honourable Ms. Justice Salionga J <i>et</i> Honourable Mr. Justice Kesslau AJ	<b>Delivered on:</b> 23 February 2022
<b>Neutral citation:</b> <i>S v Tuvetyavere</i> (CR 3/2022) [2022] NAHCNLD 14 (23 February 2022)	
<b>IT IS ORDERED THAT:</b> <ol style="list-style-type: none"><li>1. The finding or remarks by the magistrate made on 17/08/2020 that the court is satisfied that accused admits all the essential elements in the charge annexure are struck from the record.</li><li>2. The conviction and sentence are confirmed.</li><li>3. The sentence on review cover sheets is corrected to read a fine of N\$ 6000.00 or 12 months imprisonment as reflected in the judgment on sentence.</li><li>4. The sentence is antedated to 12 March 2021.</li></ol>	

**Reasons for the above order:**

SALIONGA J (Kesslau AJ concurring):

[1] Accused pleaded guilty to the charge of contravening section 7 of the Animal Health Act 1 of 2011 –Importing Animals into Namibia through ungazetted entry point without a permit. He was questioned in terms of section 112 (1) (b) of the Criminal Procedure Act 51 of 1977 and a plea of not guilty was noted in terms of section 113 of the Act.

[2] The record is confusing, and I find it difficult to follow. Although a plea of guilty was correctly altered to not guilty, the record reflects that the court was satisfied that accused admitted all the essential elements of the offence charged. The trial proceeded whereby the state led the evidence of one witness. At the closing of the State case accused testified and called no witness. He was convicted as charged and sentenced to a fine of N\$ 6000 or 12 months imprisonment.

[3] On review I remarked as follows; why a plea of not guilty was entered in terms of s113 of the Act if the magistrate was satisfied that accused admitted all the elements of the offence charged. Again the review cover sheets indicate a fine of N\$ 2000 or 6 months imprisonment while the judgment on sentence reflected a fine of N\$ 6000 or 12 months imprisonment. I further requested the magistrate to explain the discrepancies between the sentences reflected on review cover pages.

[4] On the first query the magistrate conceded that it was an error for the proceedings to show that accused admitted all the elements of the offence because accused disputed intention. She stated that the correct order should have been 'a plea of not guilty entered in terms of section 113 of the Criminal procedure Act 51 of 1977 as amended.'

[5] As to the discrepancies of sentences, the magistrate conceded that the correct sentence is reflected on the judgment before sentence. She thus requested the reviewing Judge to rectify the sentence on the review cover sheets to read a fine of N\$ 60000 or 12

months imprisonment.

[6] It appears the magistrate made an error in firstly making an order that she was satisfied that accused admitted all the elements of the offence which she was not supposed to make. Again, the different sentence was erroneously recorded on the review cover sheets. In my view the concession was properly made.

[7] In the result:

1. The findings or remarks by the magistrate made on 17 /08/2020 that “the court is satisfied that accused admits to all the essential elements in the charge annexure” is struck off from the record.
2. The conviction and sentence are confirmed.
3. The sentence on the review cover sheets is corrected to read a fine of N\$ 6000.000 or 12 months imprisonment.
4. The sentence is antedated to 12 March 2021.

J. T. SALIONGA JUDGE	E. E. KESSLAU ACTING JUDGE