

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION

HELD AT OSHAKATI

REVIEW JUDGEMENT

Case Title: The State v Nghiyelekwa Kleofas Joseph	Case no: CR 51/2023
	Division of Court: Northern Local Division
Heard before: Honourable Mr. Justice Munsu, J <i>et</i> Honourable Mr. Justice Kessler J	Delivered on: 08 December 2023
Neutral citation: <i>S v Joseph</i> (CR 51/2023) [2023] NAHCNLD 137 (08 December 2023)	
The order: <ol style="list-style-type: none">1. The conviction is confirmed.2. The sentence is amended to read: A fine of N\$1000-00 (One Thousand Namibian Dollars) or in default of payment 3 (three) months imprisonment, wholly suspended for 4 (four) years on condition that:<ol style="list-style-type: none">(i) Accused is not convicted of contravening Regulation 3A (1)(a) and (b) of the Petroleum Products Regulations, GG 7698 of 3 December 2021: Petroleum Products and Energy Act 13 of 1990, as amended, committed during the period of suspension;(ii) Accused performs a total of 150 (one hundred and fifty) hours community service, at Oshikango police station under the control and supervision of Sergeant Amukoshi Wilbard every Monday to Friday between 08:00 and 13:00,	

excluding weekends and public holidays starting 17 February 2022.

3. The sentence is antedated to 16 February 2022.

Reasons for the order:

MUNSU, J (KESSLAU, J concurring):

[1] This matter came on automatic review in terms of s 302 of the Criminal Procedure Act 51 of 1977 (the CPA). There was an inordinate delay in the finalization of this matter on review because of the magistrate having been transferred from one office to another office.

[2] The accused was charged and convicted of contravening Regulation 3A (1) (a) and (b) of the Petroleum Products Regulations, GG 7698 of 03 December 2021 of GN. 155 of 23 June 2000 as amended by GN. 202 of 29 November 2002 and GN. 122 of 14 June 2016: Petroleum Products and Energy Act, Act 13 of 1990 – prohibition on purchase, acquisition, sale, supply, disposal, transportation, possession, use or storage of fuel from unlicensed persons.

[3] The sentence imposed made reference to GG 7696 and not GG 7698. I enquired from the learned magistrate as follows:

‘Despite a diligent search, I was unable to find the Regulation allegedly contravened by the accused. May the learned Magistrate be of kind assistance to attach for me to this record the said Regulation.’

[4] In her reply, the learned magistrate attached the correct regulation and indicated that she erroneously referred to GG 7696 instead of GG 7698. Thus, the sentence has been amended.

[5] In the result, the following order is made:

1. The conviction is confirmed.

2. The sentence is amended to read: A fine of N\$1000-00 (One Thousand Namibian

Dollars) or in default of payment 3 (three) months imprisonment, wholly suspended for 4 (four) years on condition that:

- (i) Accused is not convicted of contravening Regulation 3A (1)(a) and (b) of the Petroleum Products Regulations, GG 7698 of 3 December 2021: Petroleum Products and Energy Act 13 of 1990, as amended, committed during the period of suspension;
- (ii) Accused performs a total of 150 (one hundred and fifty) hours community service, at Oshikango police station under the control and supervision of Sergeant Amukoshi Wilbard every Monday to Friday between 08:00 and 13:00, excluding weekends and public holidays starting 17 February 2022.

3. The sentence is antedated to 16 February 2022.

Judge(s) signature	Comments:
MUNSU, J.	NONE
KESSLAU, J.	NONE