

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI

REVIEW JUDGMENT

Case Title: <i>The State v Emmanuel Emmanuel</i>	CR: 28/2023 Ondangwa: OND-CRM-484/2023
	Division of Court: Northern Local Division
Heard before: Lady Justice Salionga et Mr Justice Kessler	Delivered on: 14 August 2023
Neutral citation: <i>S v Emmanuel</i> (CR 28 /2023) [2023] NAHCNLD 81 (14 August 2023)	
It is hereby ordered that: <ol style="list-style-type: none">1. The convictions as well as the sentences on both counts are confirmed.2. The matter is referred back to the magistrate to comply with the provisions of sections 10 (6) and 10(7) of the Arms and Ammunition Act 7 of 1996 as amended.	
Reasons for the order:	
KESSLAU J (concurring SALIONGA J) [1] This is a review in terms of section 302(1) of the Criminal Procedure Act 51 of 1977 as amended, (hereinafter referred to as the CPA). [2] The accused was charged with a count of the possession of a firearm without a	

licence in contravention of section 2 read with sections 38 (2) and 39 of the Arms and Ammunition Act 7 of 1996 as amended (the Act) and a count of theft. The accused pleaded guilty to the charges and was rightly convicted and properly sentenced. The learned magistrate however, failed to invoke the provisions of sections 10 (6) and 10 (7) of the Act. It is compulsory for the magistrate to bring the provisions of section 10 to the attention of an accused who should be given the opportunity to advance reasons why he should not be declared to be unfit to possess a firearm. ¹

[3] I raised a query with the magistrate as to why she did not invoke the provisions of section 10 and she replied that it was an oversight on her part.

[4] It is clear that the magistrate did not exercise her discretion properly and a failure to invoke the above provision amounts to a misdirection. In view of this I have no alternative but to refer the matter back to the magistrate to invoke the provisions of section 10 (7) of the Act.

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

1. The convictions as well as the sentences on both counts are confirmed.
2. The matter is referred back to the magistrate to comply with the provisions of sections 10(6) and 10(7) of the Arms and Ammunition Act 7 of 1996 as amended.

Judge(s) signature	Comments:
KESSLAU J:	
SALIONGA J:	

¹ *The State v Nguudipalelwa* (CR 12/2013) [2013] NAHCMD 47 (26 February 2013); *S v Kopper* (CR 49/2016) [2016] NAHCMD 209 (19 July 2016).