

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK
REVIEW JUDGMENT

Case No: CR 16/2018

In the matter between:

THE STATE

v

JONATHAN HAMASEB

ACCUSED

**(HIGH COURT MAIN DIVISION REF. NO. 290/2018)
(MAGISTRATE SERIAL NO. 25/2017)**

Neutral citation: *S v Hamaseb* (CR 16/2018) [2018] NAHCMD 47 (05 March 2018)

Coram: SIBOLEKA J et SALIONGA AJ

Delivered: 05 March 2018

Flynote: Criminal law: Offences – Arms and Ammunition Act 7 of 1996 – Section (7) – no invitation to the accused to address Court before the declaration of unfitness to possess an arm was indorsed. The time frame within which it remains in operation against the sentenced convictee was not stated. The declaration was set aside.

Summary: The accused was convicted of possession of a firearm without a licence. He was convicted and sentenced accordingly.

Held: The conviction and sentence are confirmed. The declaration of unfitness to possess a firearm is set aside.

ORDER

The declaration order of unfitness to possess a firearm in terms of section 10(6)(a) and (7) of the Arms and Ammunition Act 7 of 1996 imposed on the accused by the trial Court is set aside.

REVIEW JUDGMENT

SIBOLEKA J (SALIONGA AJ concurring):

[1] The accused appeared in the Magistrate's Court at Karibib on a charge of possession of a firearm without a licence in contravention of section 2 read with section 1, 38(2) and 39 of the Arms and Ammunition Act 7 of 1996 as amended. He pleaded not guilty and after the trial he was convicted and sentenced to: N\$800 (eight hundred Namibia Dollars) or six (6) months imprisonment. The conviction and sentence are in order and will not be interfered with.

[2] After the conviction the trial Court was obligated to act in terms of section 10(7) of the Arms and Ammunition Act 7 of 1996 which provides as follows:

'(7) The court shall upon convicting any person referred to in paragraph (a) of subsection (6) or where the court exercises a discretion as referred to in paragraph (b) of that subsection, bring the provisions of the paragraph concerned to the notice of such person and afford him or her an opportunity to advance reasons and present evidence why he or she should not be declared or deemed to be declared unfit to possess an arm'.

[3] The above warning would have availed the accused an opportunity to say something before the declaration was ordered, and this did not happen.

[4] The other difficulty is the manner in which the declaration order of unfitness to possess a firearm was structured, it reads:

'The accused is declared unfit to carry a firearm in terms of section 10(6)(a) and section (7) of Arms and Ammunition Act 7 of 1996'.

[5] The above declaration is without a time frame within which it should operate. It is for the above reasons the declaration order of unfitness to possess a firearm cannot be allowed to stand.

[6] In the result I make the following order:

The declaration order of unfitness to possess a firearm in terms of section 10 subsection 10(6)(a) and (7) of the Arms and Ammunition Act 7 of 1996 imposed on the accused by the trial Court is set aside.

A. M. SIBOLEKA
Judge

J. T. SALIONGA
Acting Judge