

Case Title: <i>The State v Rudolf Mbambo Jacks</i>	Case No: CR 27/2019
HIGH COURT REF.NO 639/2019	Division of Court: Main Division
Heard before: Mr Justice Liebenberg <i>et</i> Lady Justice N N Shivute	Delivered on: 05 April 2019
Neutral citation: <i>S v Jacks</i> CR 27/2019 [2019] NAHCMD 83 (05 April 2019)	
The order <ol style="list-style-type: none"> a) The conviction and sentence are confirmed. b) The matter is remitted to the trial court with the direction to give effect to section 10(6) and (7) of Act No 7 of 1996. 	
Reasons for order:	
<p>LIEBENBERG J (concurring SHIVUTE J)</p> <p>[1] This is a special review in terms of section 304 of the Criminal Procedure Act 51 of 1977.</p> <p>[2] The accused was charged in the magistrate's court for the district of Rundu on two counts. On count 1 for contravening s 38 (1)(o) r/w ss 1,38(1), 38(2) and 39 of the Arms and Ammunition Act 7 of 1996, (the Act) as amended and on count 2 for assault by threat.</p> <p>[3] The accused was convicted on both counts and was sentenced to a fine of N\$4 000.00 or, in default, to 12 months' imprisonment. On count 2 a fine of N\$1 000 or, in default, three (3) months imprisonment was imposed. The convictions and sentences on both counts appear to be in order and shall be confirmed.</p> <p>[4] However, the magistrate realised after the matter had been finalised that the prosecution did not apply for the accused to be declared unfit in terms of s 10(6) of the Act; neither did the court hold an inquiry in terms of s 10 (7).</p>	

[5] The relevant sub-sections of the Act read:

' (6) Subject to subsection (7), a person who is convicted by a court of-

(a) a contravention of a provision of this Act relating to the unlawful possession of an arm without the required licence, permit or other authorisation or of section 38(1)(i), (j), (k), (l) or (m), or of any other offence in the commission of which an arm was used (excluding any such conviction following upon the payment of an admission of guilt fine in terms of section 57 of the said Criminal Procedure Act, 1977), is deemed to be declared unfit to possess an arm, unless the court determines otherwise;

(b)

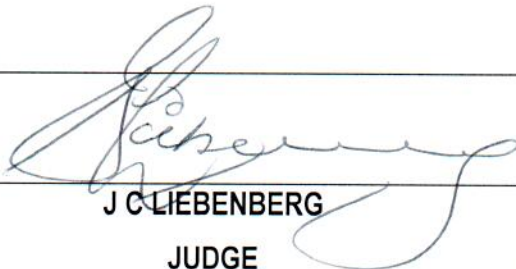
(7) The court shall upon convicting any person referred to in paragraph (a) of subsection (6) . . .bring the provisions of the paragraph concerned to the notice of such person and afford him or her an opportunity to advance reasons and present evidence why he or she should not be declared or deemed to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

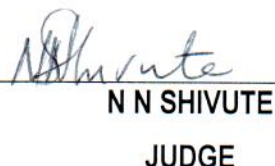
(Emphasis provided)

[6] The provisions of the subsections are mandatory and cannot be ignored. In these circumstances the matter has to be remitted to the trial court in order to give effect to the provisions of the Act.

[7] In the result, the Court makes the following order:

- a) The conviction and sentence are confirmed.
- b) The matter is remitted to the trial court with the direction to give effect to section 10 (6) and (7) of Act No 7 of 1996.


J C LIEBENBERG
JUDGE


N N SHIVUTE
JUDGE