

**CASE NO.: CR 56/07**

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**THE STATE**

versus

**LUKAS VEIKO KAPAKALWA**

**(HIGH COURT REVIEW CASE NO.: 1071/05)**

***CORAM:* VAN NIEKERK, J *et* SILUNGWE, AJ**

Delivered on: 2007-03-29

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**REVIEW JUDGMENT:**

**VAN NIEKERK, J:**

[1] In this matter the accused was convicted of reckless driving under section 80 (1) of the Road Traffic and Transportation Act, 22 of 1999. On this count he was sentenced to a fine of N\$2000 or eight months imprisonment. Although the sentence is too light, in my view, I do not propose to take any further steps regarding this aspect.

[2] The accused was also convicted of a charge of failing to report an accident. Curiously, although the prosecutor correctly charged the accused on the first count under the applicable statute, namely Act 22 of 1999, he decided in respect of the second count to charge the accused under section 135(1)(f) of the repealed predecessor of Act 22 of 1999, namely the Road Traffic Ordinance, 30 of 1967. I have compared the wording of section 135(1)(f) with the equivalent provision, namely section 78(1)(f) of Act 22 of 1999. The wording is just about the same. In my view there is sufficient evidence to sustain the conviction on count 2. The accused would not be prejudiced by an amendment of the charge sheet and a conviction under the applicable legislation. The sentence is in order.

[3] The learned magistrate failed to apply the peremptory provisions of section 51(1) of Act 22 of 1999 which provide that the accused's driver's licence shall be suspended. It will therefore be necessary to secure the accused's attendance to apply these provisions.

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

1. The conviction and sentence on the first count, c/section 80(1) of Act 22 of 1999 (Reckless driving), are confirmed.

2. The charge sheet in respect of the second count is amended to indicate that the accused was charged with a contravention of section 78(1)(f) of Act 22 of 1999.
3. The conviction on count 2 is altered to a conviction of a contravention of section 78(1)(f) of Act 22 of 1999 (Failure to report accident).
4. The sentence imposed on count 2 is confirmed.
5. The matter is remitted to the magistrate to apply the provisions of section 51(1) of Act 22 of 1999.

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**VAN NIEKERK, J**

I agree

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**SILUNGWE, AJ**