

CASE NO.: CR 140/07

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

SALATIEL NAKASHIMBA

[HIGH COURT REVIEW CASE NO.: 1311/07]

CORAM: MAINGA, J *et* PARKER, J

Delivered on: 2007 September 25

REVIEW JUDGMENT

PARKER, J.:

[1] The accused was charged before the Windhoek Magistrate's Court with assault (threat) (Count 1) and with contravening s. 38 (1) (o) of the Arms and Ammunition Act, 1996 (Act No. 7 of 1996) (the Act) (Count 2). The accused pleaded not guilty to both counts. He was tried and found guilty on both counts as charged and sentenced accordingly. In addition, the learned Magistrate declared the accused unfit to possess an arm for 24 months in terms of s. 10 (7) and (8) of the Act.

[2] I have perused the record, and I am satisfied that the proceedings are in accordance with justice in respect of the conviction and sentence. But the same cannot be said of the exercise of the learned magistrate's discretion under s. 10 (6) (b) of the Act. There is nothing on the record to show that the learned Magistrate brought the relevant provisions of s. 10 (6) of the Act to the notice of the accused and afforded him an opportunity to advance reasons and present evidence why he should not be declared unfit to possess an arm as required by the peremptory provisions of s. 10 (7) of the Act.

[3] In the result, I make the following order:

- (1) The conviction and sentence on both counts are confirmed.
- (2) The learned magistrate's order declaring the accused unfit to possess an arm for 24 months is set aside.
- (3) The matter is referred back to the trial court to enable it to summon the accused and to comply with s. 10 (7) of the Act. Thereafter, the matter should be resubmitted for review.

Parker, J

I agree.

Mainga, J