

SUMMARY

CASE NO.: CR 143/2007

THE STATE *versus* FILLEMON SHIKESHO

MAINGA, J et SILUNGWE, AJ

28/09/2007

CONTEMPT OF COURT - Accused before Magistrate's Court for plea and trial – Accused observed to be under influence of liquor – Presiding Magistrate asks why accused is drunk – An unsatisfactory response received – Accused summarily convicted of contempt of Court and sentenced to three months' imprisonment – Matter sent for review – Held – It is basic premise of our law that accused should be able to understand proceedings against him or her – When accused is before Presiding Magistrate while his or her faculties are impaired, by alcohol or drugs, Magistrate should stand down case to enable accused to sober up – It is a gross irregularity to convict and sentence accused whilst he or she is under the influence of alcohol or drugs – Conviction and sentence set aside.

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

vs

FILLEMON SHIKESHO

(HIGH COURT REVIEW CASE NO.: 1370/2007)

CORAM: MAINGA, J *et* SILUNGWE, AJ

DELIVERED: 28.09.2007

REVIEW JUDGMENT

SILUNGWE, AJ

[1] The accused is facing two counts of malicious damage to property or, in the alternative, two counts of ill treatment of animals in contravention of sections 2(1)(a), and 2(1) and (3) of the Animal Protection Act No. 71 of 1962.

[2] The record of the proceedings reflects that, on September 03, 2007, the matter was before the presiding Magistrate for plea and trial, and all State witnesses were present. However, there

are no charges attached to the record in respect of the allegations levelled against the accused. Be that as it may, when the accused's case was called, it was observed that the accused was under the influence of liquor, whereupon the court asked him why he was drunk and, on receiving an unsatisfactory response, summarily convicted him of contempt of court and sentenced him to three months' imprisonment. In all probability, the conviction and sentence for contempt of court were forwarded to this court for special review in terms of section 108(2) of the Magistrates' Courts Act No. 32 of 1944.

[3] The relevant part of the record reads as follows:

"On 03 September 2007

...

Accused present.

P.P: Says, the case is for P & T, all the witnesses are present, but the accused is very drunk, this is not the first time. On a previous occasion Mr Hangalo remanded him in Police Cells up to 17h00 but again today, this is a clear indication that accused shows disrespect of the Court.

Court: The Court observed that accused stood up with difficulty, walked side-to-side when getting in the dock, cannot find the dock, directed by the Court Orderly how to open it.

Q: Do you know that your court appearance is today?

A: Yes, I know.

Q: Why you are drunk or why you come to Court in that condition being under the influence of alcohol then.

A: How it comes, did I make something wrong? I came on time.

Q: Why you come to Court while you are drunk?

A: I cannot see properly.

Court: The Court finds the accused guilty of contempt of court.

P.P: None

Mitigation: See Annexure "B" attached hereto.

P.P: The Courts must be respected by anyone. This is not the first time, direct imprisonment.

SENTENCE: Three (3) months imprisonment.

P.P: Asks for a remand until 04/10/07 for P & T Accused is on bail. Witnesses to be warned.

Court: Rem until 04/10/07 for P & T. Accused O/B four witnesses warned 08h30".

[4] It is a basic premise of our law that the accused should be able to understand the proceedings against him or her, (to instruct a legal representative) as well as to make a proper defence. Consequently, when an accused appears before a presiding magistrate while his or her faculties are impaired by alcohol or drugs, it stands to reason that such person would not be in a position to meaningfully comprehend the proceedings against him or her. In the circumstances, the magistrate should stand down the case to enable the accused to sober up. It is a gross irregularity to simply convict such accused, to ask for mitigation or to impose a sentence, whilst he or she is under the influence of alcohol or drugs. It is thus inevitable that both conviction and sentence for contempt of court should be disturbed.

[5] The following orders are hereby made:

1. the conviction and the ensuing sentence are both set aside;
2. the case record is referred back to the court *a quo*:
 - (a) for the said court to proceed with the pending charges of malicious damage to property or their alternatives; and
 - (b) to accord the Prosecutor General an opportunity to determine whether or not the accused should be prosecuted for the common law offence of contempt of court.

SILUNGWE, AJ

I agree

MAINGA, J