CASE NO. CR 64/08

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

ALFRED UPORA

(HIGH COURT REVIEW CASE NO.: 1181/07)

CORAM: MAINGA, J. *et* MANYARARA, A.J.

Delivered on: 2008.06.24

REVIEW JUDGMENT

MANYARARA, A.J.:

[1] In this case the magistrate convicted the accused, firstly of dealing in cannabis in contravention of section 2(d) of Act 41 of 1971 and, secondly of possession of a firearm without a licence in contravention of section 2 of Act 7 of 1996.

[2] On the first count, the magistrate sentenced the accused to N$2000-00 or one year imprisonment and, on the second count to N$1000-00 or six months imprisonment.

[3] The convictions are proper and they are hereby confirmed. The sentence on count 1 is also proper but the sentence on count 2 appears to be manifestly lenient because the sentencing provision of Act 7 of 1996, section 38(2)(b)(ii) provides for a maximum fine of N$40 000-00 or ten years imprisonment or both such fine and imprisonment. In my view the provision indicates that the legislature takes a serious view of the offence relating thereto. For the reasons to be canvassed, it is late in the day to interfere with the sentence and it is allowed to stand. A further issue arising from the record of the proceedings is that the Reviewing Judge had also requested a record of the enquiry conducted in terms of section 10(6)(a) and (7) of Act 7 of 1996 (the Act). The reason for the request is that the only note of the enquiry is as follows:

> *"Section 10 Act 7 of 1996 explained 'I stay in reservation area. I cannot stay without rifle need it for protection' (sic)."*

[4] The reply received from the Clerk of Court was simply that the magistrate dealing with the matter is currently on suspension *"and therefore unable to attend to the matter"*. The implication is that the accused was allowed to keep the firearm.

[5] Be that as it may, the offence of which the accused was convicted is possession of a firearm without a licence. The effect of allowing him to keep the firearm is actually to permit him to continue committing the offence of possessing the firearm without a licence which is clearly not within the power of the Court to do. The magistrate was obliged to declare the firearm forfeited to the State.

[6] Accordingly, the order now made is that:

(a) The firearm in question is declared forfeited to the State forthwith; and

(b) The accused is declared unfit to possess a firearm for a period of two years from today's date. The Court a quo is directed to put this order into effect immediately and advise the accused accordingly.

[7] Subject to the above order, the proceedings are confirmed.

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MANYARARA, AJ

I agree

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MAINGA, J