



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CR 4/2016

In the matter between:

THE STATE

APPLICANT

And

MARTIN SINVULA WALUBITA

RESPONDENT

(HIGH COURT REVIEW CASE NO.: 1650/2015)

Neutral citation: *State v Walubita* (CR 4/2016) [2016] NAHCMD 36 (24 February 2016)

Coram: PARKER AJ *et* UNENGU AJ

Delivered: 24 February 2016

Flynote: Criminal law – Traffic offences – Driving on public road without a licence in contravention of Road Traffic and Transportation Act 22 of 1999, s 31(a), read with ss 1, 31(2) and 106(7) – Trial court failing to consider s 50(1)(b) of Act 22 of 1999 regarding disqualifying accused from obtaining a driving licence for a period of time – Such failure irregular and offensive of Act 22 of 1999 – Matter remitted to trial court to consider and apply s 50(1)(b) of the Act.

Summary: Criminal law – Traffic offences – Driving on public road without a licence in contravention of Road Traffic and Transportation Act 22 of 1999, s 31(a),

read with ss 1, 31(2) and 106(7) – Trial court failing to consider s 50(1)(b) of Act 22 of 1999 regarding disqualifying accused from obtaining a driving licence for a period of time – Trial court convicted accused of offence under Act 22 of 1999 – Trial court disregarded without reason public prosecutor’s submission that the accused be dealt with in terms of s 50(1)(b) of the Act – Such failure irregular and offensive of Act 22 of 1999 – Matter remitted to trial court to consider and apply s 50(1)(b) of the Act.

ORDER

The matter is remitted to the learned magistrate for the learned magistrate to summon the convicted person before the court in order to give the convicted person a hearing for the purpose of dealing with the convicted person in terms s 50(1)(b) of the Act.

JUDGMENT

PARKER AJ (UNENGU AJ concurring):

[1] The accused was charged before the District magistrates’ court, held at Ngoma, on one count of culpable homicide, involving motor vehicle collision, and an alternative count to count 1, being reckless or negligent driving, and on one count of driving a motor vehicle without a driving licence (count 2).

[2] The accused pleaded guilty to count 1 and count 2; whereupon he was convicted on both counts on his own plea of guilty and sentenced accordingly.

[3] In his submission before sentencing, the public prosecutor urged the learned magistrate to issue an order prohibiting the accused from obtaining a licence for a period of three months. The learned magistrate appears to have rejected the public prosecutor’s submission because he did not consider it. In response to the reviewing judge’s remark as to why the learned magistrate did not accept the public

prosecutor's submission, the learned magistrate stated that he did not provide any reason and that he accepted that he erred in the matter, and that it was an oversight which he 'has learned not to repeat'. It is to the credit of the learned magistrate that he accepted his error.

[4] In terms of s 50(1)(b) of the Road Traffic and Transport Act 22 of 1999 ('the Act'), where a court convicts a person of an offence under the Act and the person convicted is not a holder of a driving licence, in addition to imposing a sentence, the court may issue an order that such person be disqualified from obtaining a licence. The power is a discretionary one; and so, the trial court should, in order to exercise the discretionary power judicially, hear that person before deciding in terms of those provisions.

[5] In the instant case, as I have said previously, the learned magistrate did not consider the provision of s 50(1)(b) of the Act or the public prosecutor's submission at all. The best cause of action is for the learned magistrate to consider s 50(1)(b) of the Act.

[6] In the result, the matter is remitted to the learned magistrate for the learned magistrate to summon the convicted person before the court in order to give the convicted person a hearing for the purpose of dealing with the convicted person in terms s 50(1)(b) of the Act.

C Parker
Acting Judge

E P Unengu
Acting Judge