CASE NO.: CR 21/2010

IN THE HIGH COURT OF NAMIBIA
HELD AT OSHAKATI

In the matter between:

THE STATE

and

FANUEL TITUS

(HIGH COURT REVIEW CASE NO.: 195/2010)

CORAM: LIEBENBERG, J. *et* TOMMASI, J.

Delivered on: September 28, 2010

REVIEW JUDGMENT

LIEBENBERG, J.: [1] The accused was convicted and sentenced in the magistrate's court sitting at Ruacana, in the district of Outapi, on a charge of contravening s 30 (1) of Ordinance 4 of 1975 for unlawfully hunting huntable game. It is common cause that the accused had used a shotgun to kill an oryx; and that he was thereafter found in possession of the meat by officials of the Ministry of

Environment and Tourism, resulting in his arrest.

[2] The conviction and sentence are in order and will be confirmed. There is however another matter which is not in accordance with justice.

[3] When the case came before me on review, I directed the following query to the magistrate who presided over the trial:

> *"Whereas the accused was convicted of an offence in the commission of which a firearm was used, was the court not* ***mero moto*** *obliged to act in accordance with sections 10 (6) and 10 (7) of the Arms and Ammunition Act, 1996 (Act No 7 of 1996)?"*

[4] The relevant sub-sections of s 10 of the Arms and Ammunition Act read:

> *"(6) Subject to subsection (7), a person who is convicted by a court of-*
>
> *(a) a contravention of a provision of this Act relating to the unlawful possession of an arm without the required licence, permit or other authorization. or of section 38(1)(i), (j), (k), (l) or (m),* ***or of any other offence in the commission of which an arm was used*** *(excluding any such conviction following upon the payment of an admission of guilt fine in terms of section 57 of the said Criminal Procedure Act, 1977),* ***is deemed to be declared unfit to possess an arm, unless the court determines otherwise****;*
>
> *(b) ……*
>
> *(7) The court* ***shall upon convicting*** *any person referred to in paragraph (a) of subsection (6) or where the court exercises a discretion as referred to in paragraph (b) of that subsection,* ***bring the provisions of the paragraph concerned to the notice of such person and afford him or her an opportunity to advance reasons and present evidence why he or she should not be declared or deemed to be declared unfit to possess an arm.***
>
> *(8) A person declared or deemed to be declared unfit to possess an arm in terms of subsection (5) or (6), shall be so unfit for such period of not less than two years as*

may be fixed by the court concerned." (My emphasis)

[5] In the reasons provided by the magistrate he states that it completely slipped his mind to bring the provisions of s 7 of the Act to the attention of the accused and to deal with him accordingly. The section is imperative and where the State has failed to ask the court to apply the provisions of the Act, the court should have acted *mero moto.* In these circumstances the matter has to be remitted to the trial court in order to give effect to the provisions of the Act.

[6] In the result, the Court makes the following order:

1. The conviction and sentence are confirmed.
2. The matter is remitted to the trial court with the direction to give effect to section 7 of Act No 7 of 1996.

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LIEBENBERG, J

I concur.

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TOMMASI, J