
SOUTH AFRICA / JUDGMENT

S v Ngqabuko (20110145) [2011] ZAECHGHC 68; 2013 (1) SACR 275 (ECG) (24 November 2011) [2011] ZAECHGHC 68

COURT

Eastern Cape High Court, Grahamstown

BEFORE

J M Roberson, J D Pickering

CASE / FILE NUMBER

20110145

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

3

IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION

- GRAHAMSTOWN)

CASE NO: 20110145

CA&R NO: 345/2011

Date Delivered: 24/11/2011

In the matter between

THE STATE

and

PATRIC NGQABUKO

REVIEW JUDGMENT

ROBERSON J:-

[1] This matter was before me on automatic review. The accused was convicted of contravening s 65 (2)(a) of the National Road Traffic Act 93 of 1996 (the Act), that is driving a motor vehicle while the concentration of alcohol in his blood was not less than 0,05 gram per 100 millilitres, namely 0,20 gram. He was sentenced to pay a fine of R4 000.00 or to undergo 8 months' imprisonment, half of which sentence was conditionally suspended. The conviction and sentence are in order.

[2] In terms of s 35

(3) of the Act the magistrate ordered that the provisions of s 35 (1) of the Act should not take effect.

[3] S 35 of the Act provides as follows:

35 On conviction of certain offences licence and permit shall be suspended for minimum period and learner's or driving

licence may not be obtained

Subject to subsection (3), every driving licence or every licence and permit of any person convicted of an offence referred to in –

section 61 (1)(a), (b), or (c), in the case of the death of or serious injury to a person;

(aA) section 59 (4), in the case of a conviction for an offence, where–

A speed in excess of 30 kilometres per hour over the prescribed general speed limit in an urban area was recorded; or

A speed in excess of 40 kilometres per hour over the prescribed general speed limit outside an urban area or on a freeway was recorded;

(b) section 63 (1), if the court finds that the offence was committed by driving recklessly;

(c) section 65 (1), (2) or (5),

where such person is the holder of a driving licence or a licence and permit, shall be suspended in the case of –

a first offence, for a period of at least six months;

a second offence, for a period of at least five years; or

a third or subsequent offence, for a period of at least ten years, calculated from the date of sentence.

Subject to subsection (3), any person who is not the holder of a driving licence or of a licence and permit, shall, on conviction of an offence referred to in subsection (1), be disqualified for the periods mentioned in paragraphs (i) to (iii), inclusive, of subsection (1) calculated from the date of sentence, from obtaining a learner's or driving licence or a licence and permit.

If a court convicting any person of an offence referred to in subsection (1), is satisfied, after the presentation of evidence under oath, that circumstances relating to the offence exist which do not justify the suspension or disqualification referred to in subsection (1) or (2), respectively, the court may, notwithstanding the provisions of those subsections, order that the suspension or disqualification shall not take effect, or shall be for such shorter period as the court may consider fit.

A court convicting any person of an offence referred to in subsection (1) shall, before imposing sentence, bring the provisions of subsection (1) or (2), as the case may be, and of subsection (3) to the notice of such person.

.....

[4] The accused did not present evidence under oath with regard to the suspension of his driving licence, and merely made an unsworn statement providing reasons why it should not be suspended.

[5] I addressed the following query to the magistrate:

“The Magistrate ordered that the provisions of s 35(1) of Act 93 of 1996 should not take effect. S 35

(3) of the Act provides that such an order may be made “after the presentation of evidence under oath.”

It appears from the record that the information given by the accused relating to the suspension or otherwise of his driving licence, was not given under oath. Was this proper compliance with s 35 (3)?”

A portion of the magistrate’s reply was as follows:

“I apologise for the oversight as such will not find its repetition. However I respectfully submit as I did not suspend the accused driver’s licence despite not complying with the amended Section requiring evidence under oath, no prejudice was suffered by accused.

In the circumstances it is prayed that the proceedings be confirmed.”

[6] I am unable to confirm the order. A court is only empowered to order that the provisions of s 35(1) and (2) should not take effect, after the presentation of evidence under oath. The order made by the magistrate was therefore void. I would add that prejudice to an accused is not the only consideration in deciding whether or not to make such an order. The offences which bring about an automatic suspension of a driving licence are serious offences, involving potential harm to other road users. It is logical that such an order may only be made after the presentation of evidence under oath (or affirmation), which is by its nature supposed to be credible, and which may also be tested. Society has an interest in whether or not persons convicted of such offences should be allowed to drive again on a public road, and the decision that they may continue to do so should not be taken lightly.

[7] The following order is made:

7.1 The conviction and sentence are confirmed.

7.2 The order made by the magistrate in terms of s 35(3) of Act 93 of 1996 is set aside.

7.3 The matter is remitted to the magistrate in order to apply the provisions of s 35 of Act 93 of 1996.

J M ROBERSON

JUDGE OF THE HIGH COURT

I agree,

J.D. PICKERING

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAECGHC/2011/68.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/s-v-ngqabuko-unknown-topic-aecghc-2011>

Prepared on 10 October 2026 · Esheria