

**REPORTABLE**

**CASE NO. CC 32/2001**

**SUMMARY:**

**CALVIN LISELI MALUMO AND 119 OTHERS**

VS

**THE STATE**

**HOFF, J:**

2005/12/08

**CRIMINAL PROCEDURE:**

Application for special entry. Consultation by prosecutors with the State witnesses during adjournments whilst such witness still giving evidence-in-chief No rule of law prohibiting interaction between prosecutor and witness.

Consultation at this stage generally undesirable and should be discouraged. If circumstances require consultation opposing side should be informed and the purpose thereof

Identification of accused person - in dock per se not inadmissible - evidential consequences flowing from such identification important. Dock identification - unsatisfactory situation further compounded where witnesses prior to identifying accused persons in dock were given a photo album containing photos of accused persons with the names and numbers of accused persons - such practice suggests the identification of accused persons - is an irregularity - a departure from those formalities rule and principles or procedure in accordance with which the law requires a criminal trial to be initiated or conducted - fairness of trial compromised by such practice of prosecutor Special entry recorded

IN THE HIGH COURT OF NAMIBIA

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**HIGH COURT JUDGEMENTS**

a) the pro-secution witnesses have been consulted regarding whether witness statements submitted during our examination after

c) the witnesses' statements were still under examination and cross-examination conducted by the Court are irrelevant and prejudicial to the accused's right to a fair trial.

If an accused uses third parties to obtain witness statements that are of the same nature as those obtained by the prosecution during the trial, the Court will find that the accused has acted illegally and that the statements are inadmissible.

The Court will also find that the statements are irrelevant and prejudicial to the accused's right to a fair trial.

## HIGH COURT JUDGEMENTS

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