



CASE NO. CR 58/2012

**Not Reportable**

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**THE STATE**

**VS**

**BRUNO RICARD ORLAM**

**ACCUSED**

*(HIGH COURT REF. NO.: 1234/2012)*

**CORAM: MILLER, AJ et PARKER, J**

**DELIVERED: 27 JUNE 2012**

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**SPECIAL REVIEW JUDGMENT**

**MILLER, AJ:** [1] This matter was submitted for review purposes in terms of Section 304 (4) of Act 51 of 1977.

[2] The accused was charged in the magistrate's court sitting at Dordabis with the crimes of Culpable Homicide and secondly with the offence of the reckless or negligent driving of a motor vehicle upon a public road in contravention of the relevant road traffic legislation.

[3] Upon being arraigned the accused pleaded not guilty to both counts. The state thereupon called three witnesses in support of its case.

[4] The prosecutor thereafter informed the presiding magistrate that he wished to lead the evidence of further witnesses whose presence he could not secure timeously. The prosecutor applied for and was granted a postponement to 22 February 2012.

[5] On that date a further postponement was granted to 10 April 2012 and again to 22 May 2012.

[6] On 22 May 2012 the state was once more not ready to proceed. The prosecutor once more applied for a postponement. Mr. van Vuuren who represented the accused opposed that application. The learned presiding magistrate thereupon gave the following ruling:

"RULING ON APPLICATION FOR REMAND:

Having heard the state and defence regarding request for remand and having request and to the record of proceedings in this matter, the court finds in favour of the accused and thus the state's application for remand is refused and the matter is accordingly struck from the roll. Once the state is ready the accused may be re-summoned to appear and have matter finalized. Accused is excused, his warning is cancelled.

T. MAYUMBELO  
MAGISTRATE  
22/05/2012."

[7] I agree with Ms. Horn, the Control Magistrate, who submitted the matter for review that the ruling of the magistrate is not in law sustainable.

[8] The headnote in ***S v Magoda 1984 (4) SA 462 (C)*** in my view correctly summarizes the state of our law on this issue. It reads as follows:

“A presiding officer in a criminal case does not have the authority to close the state case if the state prosecutor is not willing to do so, but if the prosecutor, after an application by him for the postponement of the trial, has been refused, refuses to adduce evidence or to close the state case, it is presumed that the state case is closed, and the judicial officer should continue with the proceedings as if the state prosecutor had indeed closed the case.”

[9] Had the learned magistrate adopted that course, he would have had to return a verdict of not guilty and discharged the accused by virtue of the provisions of Section 174 of Act 51 of 1977. That is so because the evidence adduced did not in any way establish a case that the accused had to meet.

[10] For these reasons the magistrate’s ruling is set and substituted with the following order:

[11] The accused is found not guilty and he is discharged.

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**MILLER, AJ**

I agree

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**PARKER, J**