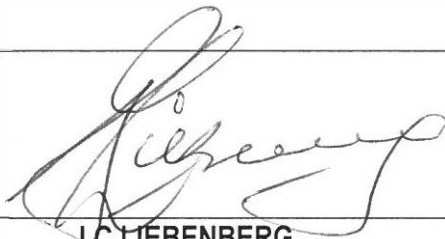


Case Title: <i>The State v Milly Bezuidenhout</i>	Case No: CR 59/2018
Heard before: Honourable Mr Justice Liebenberg <i>et</i> Honourable Ms Justice Shivute	Division of Court: Main Division Delivered on: 10 August 2018
Neutral citation: <i>S v Bezuidenhout</i> (CR 59/2018) [2018] NAHCMD 240 (10 August 2018)	
The order: <ol style="list-style-type: none"> a) The conviction and sentence on counts 1 and 2 are set aside. b) The matter is remitted to the same court and proceedings are to start <i>de novo</i> before another magistrate. c) In the event of a conviction, regard must be had to the sentence already served by the accused. 	
Reasons for order:	
LIEBENBERG J (concurring SHIVUTE J) <ol style="list-style-type: none"> 1. After evidence was heard the accused was convicted of contraventions under s 2(b) and 2(d) of the Abuse of Dependence-Producing Substances and Rehabilitation Centres Act 41 of 1971, having been found in possession of cannabis in respect of count 1 and mandrax tablets containing methaqualone in respect of count 2. Thereafter he was sentenced to a fine of N\$1 000.00 or 3 (three) months' imprisonment on count 1, and 6 (six) months' imprisonment on count 2. 2. During the trial in the court <i>a quo</i> and after the closing of the State's case and the accused's rights having been explained, he indicated that he would testify in his defence and call one witness. The matter was then remanded. On resumption of the trial the accused however was not afforded the opportunity to testify and proceedings started off with the testimony of his witness, where after the defence case was closed. 	

3. The matter came on review and Salionga AJ, queried the presiding magistrate as to why the accused was not given an opportunity to testify as earlier indicated. The magistrate conceded that there was an oversight on her part and proposed that the conviction be set aside as the accused was not afforded a fair trial.
4. Section 151(1)(b) of the Criminal Procedure Act 51 of 1977 provides as follows:
 'The court shall also ask the accused whether he himself intends giving evidence on behalf of the defence, and-
 (i) if the accused answers in the affirmative, he shall, except where the court on good cause shown allows otherwise, be called as a witness before any other witness for the defence;' (Emphasis provided)
5. The section makes plain that the accused must be afforded the opportunity to give evidence if he/she wishes to do so, failing which the proceedings would be irregular. The concession is therefore proper and the conviction on both counts fall to be set aside
6. In the result, it is ordered:
- a) The conviction and sentence on counts 1 and 2 are set aside.
 - b) The matter is remitted to the same court and proceedings are to start *de novo* before another magistrate.
 - c) In the event of a conviction, regard must be had to the sentence already served by the accused.



J C LIEBENBERG

JUDGE



N N SHIVUTE

JUDGE

IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION
HELD AT WINDHOEK, 10 AUGUST 2018
BEFORE THE HONOURABLE MR JUSTICE LIEBENBERG
MRS JUSTICE SHIVUTE

THE STATE

versus

MILLY BEZUIDENHOUT

Having considered the matter in chambers and having read the documents filed of record.

IT IS ORDERED THAT:

1. The conviction and sentence on counts 1 and 2 are set aside.
2. The matter is remitted to the same court and proceedings are to start *de novo* before another magistrate.
3. In the event of a conviction, regard must be had to the sentence already served by the accused.

BY ORDER OF THE COURT



REGISTRAR

