

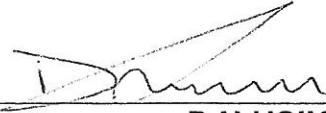
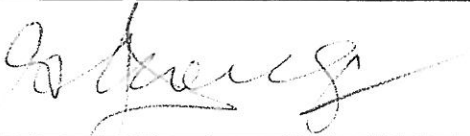
'ANNEXURE 11'

IN THE HIGH COURT OF NAMIBIA

Case Title: <i>The State v Romenieh Links</i>	Case No: CR 68/2018
Heard before: Honourable Ms Justice Usiku Honourable Mr Justice Unengu	Division of Court: Prison Division
Neutral citation: <i>S v Links</i> (CR 68/2018)[2018] NAHCMD 268 (4 September 2018)	Delivered on: 4 September 2018
The order: The proceedings in terms of section 112 (1)(b), before magistrate E L Libebe in this matter are set aside. The trial or the proceedings in terms of section 112 (1)(b), may commence <i>de novo</i> before another magistrate at the discretion of the Prosecutor General.	
Reasons for order: USIKU J (concurring Unengu AJ) Flynote: Special Review – Matter must start <i>de novo</i> where the trial magistrate no longer available – Proceedings be set aside. Summary: The matter commenced before a magistrate who has since left the magistracy. Held proceedings are set aside – Matter ordered to start <i>de novo</i> before another magistrate. 1. This matter has been referred to this Court by way of Special Review in terms of section 304 of the Criminal Procedure Act, Act 51 of 1977 (CPA). The accused was arraigned in the Magistrate Court Mariental on a charge of driving under the influence of intoxicating liquor alternatively – reckless or negligent driving.	

2. When the charges were put to the accused on the 15 February 2016 the prosecutor informed the court that he was going to proceed with a charge on the alternative which was reckless driving.
3. The accused pleaded guilty before magistrate E L Libebe whereafter the court proceeded to invoke the provisions of section 112 (1)(b).
4. After questioning the accused as aforesaid, the Court was not satisfied that the accused was guilty on the alternative charge and postponed the matter to another date for lab results. The accused's bail was extended.
5. The case was remanded on several occasions and in the meantime the accused remained at large.
6. On the 12 April 2017 the accused appeared on a warrant of arrest which was cancelled after he had given a reasonable explanation for his absence and the matter was postponed by another magistrate Verinao Kamahene who postponed the matter for sentence. The magistrate who commenced the proceedings has since resigned.
7. When this matter came before me, I directed a query to the magistrate to explain the reason for Special Review as there was none.
8. In her reply the magistrate explain in detail the reasons for Special Review and cited relevant authorities.
9. I am in agreement with the learned magistrate and that in a situation such as the present one, it has been said (see *S v Scheepers* 2009 2 SACR 58 at 61g-h per Wills J) that the failure of a lower court to apply for the setting aside of proceedings and the commencement of a trial *de novo*, as a result of the unavailability of the magistrate who began hearing evidence, in the matter, will not necessarily result in a finding that an accused was subsequently wrongly convicted, if a trial *de novo* does, in fact, take place without the prior sanctions of the High Court.

10. Nevertheless, it would certainly be desirable and good practice for an application to be made to the High Court, by way of Special Review, for the setting aside of previous proceedings and the commencement of a trial *de novo*. (my underlining)
11. In my view the point made by Willis J, is a correct statement of Law and so I adopt it. Having done so, I make the following order:-
12. The proceedings in terms of section 112 (1)(b) before magistrate E L Libebe in this matter are set aside.
13. The trial or the proceedings in terms of section 112 (1)(b) may commence *de novo* before another magistrate at the discretion of the Prosecutor General.

	
<p>D N USIKU</p> <p>JUDGE</p>	<p>E P UNENGU</p> <p>ACTING JUDGE</p>

IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION

HELD AT WINDHOEK ON TUESDAY, 4 SEPTEMBER 2018

BEFORE THE HONOURABLE MS JUSTICE USIKU

MR JUSTICE UNENGU, AJ

In the matter between

THE STATE

and

ROMENIEH LINKS

ACCUSED

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

IT IS ORDERED:

1. The proceedings in terms of section 112 (1)(b) before magistrate E L Libebe in this matter are set aside.
2. The trial or the proceedings in terms of section 112 (1)(b) may commence *de novo* before another magistrate at the discretion of the Prosecutor General.

BY ORDER OF THE MANAGING JUDGE



REGISTRAR

/da

To: Magistrate's Court Mariental (A K Matroos)

Directorate of Legal Aid