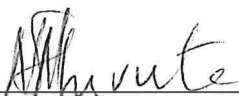


“Annexure 11”
IN THE HIGH COURT OF NAMIBIA

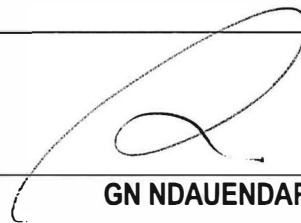
Case Title: <i>The State v Courtney Cloete</i>	Case No: CR 70/2018 High Court ref. no.: 1197/2018 Magistrate's Serial number: 55/2018
	Division of Court: High Court
Heard before: Honourable Mrs Justice Shivute et Honourable Mr Justice Ndauendapo	Delivered on: 06 September 2018
Neutral citation: <i>S v Cloete</i> (CR 70/2018) [2018] NAHCMD 270 (06 September 2018)	
The order: <ul style="list-style-type: none">a) The matter is remitted to the magistrate in terms of section 312 of the Criminal Procedure Act 51 of 1977 with the direction to invoke the provisions of s 51(3) of the Road and Transportation Act 22 of 1999.b) The magistrate must provide the accused with the opportunity to state why an order disqualifying him from applying for a learner's driver's licence should not be made.	
Reasons for order:	
Shivute J (Ndauendapo J concurring) <ul style="list-style-type: none">1. The accused was convicted in the Windhoek Magistrate's court for driving with an excessive breath alcohol level contravening section 82(5)(a) read with sections 1, 86 (6), 82 (7), 86, 89(1) and 89 (4) of the Road Traffic and Transportation Act 22 of 1999 on count one and driving without a driver's licence on count two.2. He was sentenced to N\$5000 (five thousand Namibia dollars) or in default of payment to eight months imprisonment for count one and N\$ 1000 (one thousand Namibia dollars) or in default of payment to three months imprisonment on count two. The Magistrate further made an order in	

licence for a period of twenty four months.

3. The matter was referred to me for purposes of review. After perusing the review record I raised a query with the learned magistrate as why the accused was not afforded the opportunity to address the court as to why he should not be disqualified from applying for a learner's driver's licence. The magistrate conceded that it was an oversight on her part and that the accused ought to have been afforded an opportunity to address the court in that regard.
4. Section 51 (3) provides that 'if a person convicted of an offence mentioned in subsection (1) is not the holder of a driving licence, the court, apart from imposing a sentence, shall declare such person to be disqualified from obtaining a learner's licence or driving licence for such period as the court may determine, but not being less than the minimum period contemplated in paragraph (a), (b) or (c) of subsection (2), as may be applicable.'
5. The provisions of s 51 are obligatory and they must be adhered to without any exception in relation to the provisions of s 83 (2).
6. I have no problem with the conviction as well as the sentence imposed. However, since the learned magistrate failed to invoke the provisions of s 51(3) I have no alternative but to refer the matter back to the magistrate as her failure to invoke the provisions of s 51(3) amounts to a misdirection.



NN SHIVUTE
JUDGE



GN NDAUENDAPO
JUDGE