


“ANNEXURE 11”

IN THE HIGH COURT OF NAMIBIA

<b>Case Title:</b> State v <i>Lubinda and 5 Others</i>	<b>Case No:</b> CC 17/2016
	<b>Division of Court:</b> High Court
<b>Heard before:</b> Honourable Ms Justice. Salionga	<b>Delivered on:</b> 17 September 2018
<b>Neutral citation:</b> <i>The State v Anastancia Lubinda</i> (CC 17/2016) [2018] NAHCMD 292 ( 17 September 2018)	
<b>The order:</b> <ol style="list-style-type: none"><li>1. The application for leave to appeal is dismissed</li></ol>	
<b>Reasons for order:</b>	
SALIONGA A J  <ol style="list-style-type: none"><li>1. Applicants 1, 3, 5 and 6 applied for leave to appeal against the court's judgement dated 20 April 2018 wherein the recusal application was dismissed.</li><li>2. The application was dismissed on the basis that the applicants' allegations are without merit and failed to substantiate their assertions that the presiding judge is bias and/ or conflicted.</li><li>3. The reasons for dismissing the application is clearly stated in paragraphs 18,19,20 23,26 and 27 of the judgement</li></ol>	

4. I stand by my judgement in that there is no cordial or close relationship between me and the said magistrates as alleged by the applicants, and the errors or mistakes raised are not material to vitiate the ruling. The evidence is apparent from the record. The trial proceedings are still at an infant stage and the state needs to lead more evidence in proving its case. Finally, the legal principle *nemo index in sua causa* does not find application in this matter because the magistrates that testified in the applicants' trial were not litigants but were witnesses.

5. Reference was also made on various positions I held in the magistracy in support of their assertions. These assertions are also without merit. Judicial officers are trained to exercise their judicial functions impartially, without fear or favour and to give reasons for their decisions. In arriving at my decision, I made such decision in my capacity as a Judge and not as the Chief magistrate.

  
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**J. T SALIONGA**  
**ACTING JUDGE**