

“ANNEXURE 11”

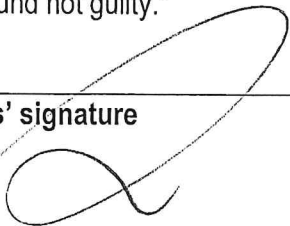
IN THE HIGH COURT OF NAMIBIA

<b>Case Title:</b> The State // Johnny Haakura	<b>Case No: 1623/2017</b> CR 87 /2018
	<b>Division of Court:</b> High Court
<b>Heard before:</b> Honourable Mr Justice Ndauendapo <i>et</i> Honourable Mr Justice Siboleka	<b>Delivered on:</b> 31 October 2018
<b>Neutral citation:</b> <i>The State v Haakura</i> (CR 87 /2018) [2018] NAHCMD 345 (31 October 2018)	
<b>The order:</b>  1. The acquittal is in order, but the way it is phrased is wrong and it is amended to read as follows: The accused is found not guilty.	
<b>Reasons for order:</b>	
NDAUENDAPO J (concurring SIBOLEKA J)  1. The accused was charged with assault by threat and malicious damage to property. The prosecution led evidence and the accused testified in his defence. After that, the accused was found not guilty of assault by threat and malicious damage to property <u>and is discharged in terms of s174 of Act 51 of 1977.</u> (my emphasis)  2. The matter came before me for review. I directed a query to the magistrate in the following terms:  1. The accused in this matter was found not guilty of assault by threat and malicious damage to property and discharged in terms of s 174 of Act 51 of 1977, whereas after the state's case he testified.  2. Should the verdict not have been 'not guilty as charged?'  3. The learned magistrate replied and conceded that 'the verdict should have been not guilty as charged. It was an oversight on my party and I pray that the wording be amended as follows: Accused is not guilty	

as charged.

4. S 174 of the Criminal Procedure Act 51 of 1977 provides: 'If, at close of the case for the prosecution at any trial, the court is of the opinion that there is no evidence that the accused committed the offence referred to in the charge or any offence of which he may be convicted on the charge, it may return a verdict of not guilty.'
5. In this case the accused testified after the close of the state's case and therefore s 174 does not find application. He was found not guilty after he testified and the verdict should have been "The accused is found not guilty."

**Judges' signature**



**G N NDAUENDAPO**

I concur



**A. M. SIBOLEKA**

**Note to the parties**