**REPUBLIC OF NAMIBIA**

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**HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK**

**RULING**

Case No: CC 17/2018

In the matter between:

**THE STATE**

**V**

**MAMSY MWENENI HILMA NUUYOMA FIRST ACCUSED**

**LUKAS NESTOR SECOND ACCUSED**

**BENVINDO MOMAFUBA THIRD ACCUSED**

**PEMBELE ZIMUTU FOURTH ACCUSED**

**PAULO KIALA FIFTH ACCUSED**

**JOAO MANUEL DOS SANTOS SIXTH ACCUSED**

**TATIANA LUQUENA MUCHADU GONGA SEVENTH ACCUSED**

**CARLOS VICTOR ELISEU EIGHTH ACCUSED**

**ISAAC CATIVA CUPESSALA NINTH ACCUSED**

**PAQUETE AMERICO KAPAYOLA JOSE TENTH ACCUSED**

**MALAKIAS TOMAS RUFINE ELEVENTH ACCUSED**

**MIAPA AURELIO NELSON TWELFTH ACCUSED**

**LUCIO JOSE CAZEMBE THIRTEENTH ACCUSED**

**NOAH BOYKIE NAUKOSHO FOURTEENTH ACCUSED**

**Neutral Citation*:*** *S v Nuuyoma* (CC 17/2018) [2019] NAHCMD 112 (2 April 2019)

**CORAM:** MILLER AJ

**Heard: 01 APRIL 2019**

**Delivered: 02 APRIL 2019**

**Reasons: 17 APRIL 2019**

**ORDER**

a) The matter is postponed to 08 April 2019 at 10h00 for purposes of conducting a trial-within-a-trial.

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**RULING**

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MILLER AJ

[1] In these proceedings I commenced, hearing evidence on 01 April 2019 of a police officer in the Namibian Police Force regarding the search and seizure of specific documents allegedly found at the place of residence of accused no.1 and accused no.2. An objection was raised to the admissibility of the documents on the basis that the necessary procedures prescribed by the relevant legislation and the Constitution had not been complied with and consequently, the documents should not be admitted.

[2] At the heart of the matter is the question whether the documents are admissible in evidence against the accused. And the question arises whether that should be decided during the course of the trial-within-a-trial, or whether the trial should proceed and the documents accepted with the consequence that the admissibility of the documents would be determined at a later stage, at the conclusion of the trial.

[3] I have seriously considered whether which option of the two I have mentioned I should follow. In my view, there is in the present case a very fine distinction between the two options. Whether I should proceed with the trial or whether I should conduct the trial-within-a-trial and determine the admissibility of the documents as a separate issue and in the absence of the assessors. I bear in mind that the admission of evidence even on a preliminary basis may, in the circumstances, be prejudicial to the accused in the sense that it may amount to an infringement of their rights and consequently an irregularity in the trial itself, which may impact upon the trial as a whole.

[4] Coming to a conclusion on the matter, I have decided that if I were to err, I would err on the side of caution. I have consequently concluded that the admissibility of the documents allegedly found in possession of accused no.1 at the residence of herself and accused no.14 should be determined in a trial-within-a-trial which I will conduct in the absence of the assessors.

[5] I therefore make the following order:

1. The matter is postponed to 08 April 2019 at 10h00 for purposes of conducting a trial-within-a-trial.

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MILLER

Judge

APPEARANCES:

PLAINTIFF: Mr MUHONGO

Of the Prosecutor-General’s Office, Windhoek

FIRST ACCUSED: Mr. CHRISTIAANS

Of W. T. Christiaans Legal Practitioners

Instructed by Directorate of Legal Aid, Windhoek

SECOND, THIRD AND

SEVENTH ACCUSED: Mr UANIVI

Of Uanivi & Gaes Inc.

Instructed by Directorate of Legal Aid, Windhoek

FIFTH ACCUSED: Mr KAMWI

Of K Kamwi Law Chambers

Instructed by Directorate of Legal Aid, Windhoek

SIXTH AND TENTH

ACCUSED: Mr CAROLUS

Of Neves Legal Practitioners

Instructed by Directorate of Legal Aid, Windhoek

EIGHTH, NINTH AND

TWELFTH ACCUSED: Mr BROCKERHOFF

Of Brockerhoff & Associates

Instructed by Directorate of Legal Aid, Windhoek

ELEVENTH AND

THIRTEENTH ACCUSED: Mr TJITEERE

Of Dr. Weder, Kauta & Hoveka Inc.

Instructed by Directorate of Legal Aid, Windhoek

FOURTEENTH ACCUSED: In-Person