

REPUBLIC OF NAMIBIA



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
NOAH BOYKIE NAUKOSHO

THIRTEENTH ACCUSED
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.

RULING

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:

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

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