

"ANNEXURE 11"

IN THE HIGH COURT OF NAMIBIA

Case Title: State v Yakaye Mwambwa	Case No: High Court Ref.No. 478/2019 CR 18/2019
	Division of Court: High Court Main Division
Heard before Honourable: JC LIEBENBERG NN SHIVUTE	Delivered on: 7 March 2019
Neutral citation: <i>S v Mwambwa</i> (CR 18/2019) [2019] NAHCMD 47 (7 March 2019)	
The order: <ol style="list-style-type: none">1. The order by the assistant magistrate to withdraw the charge is set aside.2. The matter is referred back to the magistrate who took a plea to proceed with the trial.3. If the magistrate who took the plea is not available another magistrate may proceed with the matter in terms of s 118 of the Criminal Procedure Act 51 of 1977.4. However, another magistrate should familiarise her/himself with <i>S v Wellington</i> matter 1990 NR 20 (HC) which deals with unavailability of presiding officer.5. The accused to be brought before court in terms of s 314 of the Criminal Procedure Act.	
Reasons for order:	
SHIVUTE J (concurring LIEBENBERG J) <ol style="list-style-type: none">1. This matter was brought before me for special review by the district magistrate of Katima Mulilo. The accused pleaded guilty to the charge and the court entered a plea of not guilty in terms of s113 of the Criminal Procedure Act 51 of 1977.	

2. The matter was postponed for trial. However, when it came for trial the accused appeared before an assistant magistrate. The prosecutor informed the assistant magistrate that the trial magistrate was not available and the investigating officer had filed a statement to the unavailability of the witness. He further requested the assistant magistrate to withdraw the charge provisionally pending the tracking of the witness.
3. The assistant magistrate than complied with the request from the state prosecutor and withdrew the charge. It was wrong for the prosecutor to mislead the court to withdraw the charge after the accused had already pleaded. Such irregularity cannot be allowed to stand.

	
N'N SHIVUTE JUDGE	J C LIEBENBERG JUDGE