

**REPUBLIC OF NAMIBIA**



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

Case No: CR 19/2020

**THE STATE**

and

**JAN HENDRICKS**

**ACCUSED**

**Neutral Citation:** *S v Hendricks* (CR 19/2020) [2020] NAHCMD 114 (25 March 2020)

**Coram:** PARKER AJ et MILLER AJ

**Delivered:** 25 March 2020

**Fly Note:** Interpretation of statute – Whether Act 9 of 2003, s 34 is applicable only before the accused pleaded to the charge.

**Summary:** Accused was charged with a contravention of section 39(1) of Act 9 of 2003 and failed to comply with a court order directing him to pay maintenance in respect of his two minor children. The magistrate acceded to prosecutor's request to convert the proceedings into section 34 inquiry. The question for review is whether section 34 inquiries of Act 9 of 2003 is applicable before the accused pleaded to the charge, which was answered in the negative by the review court.

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## ORDER

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I decline to entertain the request to exercise my powers to review the matter. There is no final decision of the lower court for this court to review. The papers are returned herewith.

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## REVIEW JUDGMENT

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MILLER AJ, (PARKER AJ concurring)

[1] The matter comes before me on special review.

[2] The accused was charged with a contravention of s 39(1) of Act 9 of 2003 (the Act). The allegation in essence is that the accused failed to comply with a court order directing him to pay maintenance in respect of his two minor children.

[3] The accused pleaded not guilty and alleged that his failure to comply with the court order was because he had lost his employment, resulting in financial hardship which made him unable to comply with the court order.

[4] Thereupon the prosecutor requested that the proceedings be converted into an inquiry in terms of section 34 of the Act. The magistrate acceded to this request.

[5] The learned magistrate now seemingly has second thoughts as to whether he should have done so. His reasoning seems to be that s 34 of the Act is only applicable in circumstances where the accused had not yet pleaded to the charge.

[6] I do not agree. Section 34 of the Act provides for the conversion of a criminal proceedings into an inquiry “during the course of criminal proceedings when the prosecutor so requests”. The phrase “during the course of criminal proceedings”

does not mean upon a plain reading thereof that it is confined to proceedings prior to the accused tendering a plea to the charge.

[7] Consequently, I decline to entertain the request to exercise my powers to review the matter. There is no final decision of the lower court for this court to review.

[8] The papers are returned herewith.

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PJ Miller  
Acting Judge

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C Parker  
Acting Judge