

<p><b>Case Title:</b></p> <p><i>The State v Kashinawa Johannes</i></p> <p><i>The State v Shipipa Johannes</i></p> <p><i>The State v Hamatwi Benhard Hausiku</i></p> <p><i>The State v Hamutenya Immanuel Haingura</i></p> <p><i>The State v Angel Nelson Nelson</i></p> <p><i>The State v Mundjenge Mateus Mukuve and Others</i></p> <p><i>The State v Arture Kasinda and Others</i></p> <p><i>The State v Kameya Isack</i></p> <p><i>The State v Ndara Moses Kashekere</i></p>	<p><b>Case No:</b></p> <p>CR 51/2020</p>
<p><b>High Court MD Review No:</b></p> <p>951/2020</p> <p>952/2020</p> <p>953/2020</p> <p>954/2020</p> <p>955/2020</p> <p>956/2020</p> <p>958/2020</p> <p>959/2020</p> <p>960/2020</p>	<p><b>Division of Court:</b></p> <p>Main Division</p>
<p><b>Heard before:</b></p> <p>Mr Justice Liebenberg et</p> <p>Lady Justice Claasen</p>	<p><b>Delivered on:</b></p> <p>17 July 2020</p>
<p><b>Neutral citation:</b> <i>S v Johannes and Others</i> (CR 51/2020) [2020] NAHCMD 298 (17 July 2020)</p>	

**The order:**

- a. The proceedings in the abovementioned matters 1 – 9 are not endorsed in terms of s 304 (1) of the CPA to be in accordance with justice.
- b. The Registrar is directed to bring this judgment to the attention of the Executive Director of the Office of the Judiciary and the Chief Magistrate, who need to attend to the issues identified in the judgment.

**Reasons for order:**

LIEBENBERG J (concurring CLAASEN J)

Introduction

[1] The above captioned cases came on review in terms of s 302 of the Criminal Procedure Act, 51 of 1977 (the CPA). These matters were finalised between 09 December 2016 and, the latest, on 18 January 2018; the rest during 2017. The dates finalised, the sentence, transcribers certification date and number of pages in the respective transcripts are as follows:

- HC Ref 951/2020
  - *S v Kashinawa Johannes*.
  - Sentenced on 10 August 2017.
  - N\$3000 or months' imprisonment.
  - Transcriber's certificate dated 02/10/2017.
  - Transcript - 29 pages.

- HC Ref 952/2020
  - Name: *S v Shipipa Johannes*.
  - Sentenced: 21/07/2017
  - [N\$8000 / 3 years' imprisonment].
  - Transcriber's certificate dated 19/06/2020.
  - Transcript - 10 pages.
  
- HC Ref 953/2020
  - Name: *S v Hamatwi Benhard Hausiku*
  - Sentenced: 18/01/ 2018
  - 3 years' imprisonment.
  - Transcriber's certificate dated 19/06/2020.
  - Transcript - 24 pages.
  
- HC Ref 954/2020
  - Name: *The State v Hamutenya Immanuel Haingura*.
  - Sentenced: 09/12/2016.
  - Fine suspended & community service.
  - Transcriber's certificate 19/06/2020.
  - Transcript – 12 pages.
  
- HC Ref 955/2020
  - Name: *The State v Angel Nelson Nelson*.
  - Sentenced: 20/07/2017.
  - N\$5000 / 3 years' imprisonment.
  - Transcriber's certificate 19/06/2020.
  - Transcript – 44 pages.

- HC 956/2020
  - Names: *S v Mundjenge Mateus Mukuve and Others*
  - Sentenced: 02/08/2017
  - Fines N\$6000 & N\$3000 / 3 years' + 1 year imprisonment.
  - Transcriber's certificate 19/06/2020
  - Transcript - 166 pages.
  
- HC 958/2020
  - Names: *S v Arture Kasinda and Another*
  - Sentenced: 14/08/2017.
  - N\$15 000 / 3 years' imprisonment.
  - Transcriber's certificate 19/06/2020.
  - Transcript- 13 pages.
  
- HC 959/2020
  - Name: *S v Kameya Isack*
  - Sentenced: 11/08/2017
  - N\$10 000 / 3 years' imprisonment.
  - Transcriber's certificate 24/06/2020.
  - Transcript - 50 pages.
  
- HC 960/2020
  - Name: *S v Ndara Moses Kashekere.*
  - Sentenced: 31/08/2017.
  - N\$5000 / 24 months' imprisonment.
  - Transcriber's certificate 19/06/2020.
  - Transcript - 10 pages.

[2] These matters emanate from the magistrate court Rundu and were sent on review without any explanation by either the clerk of the court or the magistrate, explaining the non-compliance with the provision of s 303 of the CPA. The section in peremptive terms reads:

'The clerk of the court in question shall within one week after the determination of a case referred to in paragraph (a) of section 302(1) forward to the registrar of the provincial division having jurisdiction the record of the proceedings in the case or a copy thereof certified by such clerk, together with such remarks as the presiding judicial officer may wish to append thereto, and with any written statement or argument which the person convicted may within three days after imposition of the sentence furnish to the clerk of the court, and such registrar shall, as soon as possible, lay the same in chambers before a judge of that division for his consideration.'

[3] In turn, the judge before whom any review matter is laid, must be satisfied from the record of the proceedings submitted, that the proceedings are in accordance with justice, before endorsing the certificate to that effect upon the record.

[4] What is thus required of a reviewing judge is to ensure that all the relevant legal rules were complied with and that an appropriate sentence was imposed.

[5] However, when the record of the proceedings under review only comes to the attention of a judge years later and where the accused person(s) has finished serving his/her sentence, then such judge in my view, is not in the position to certify that the proceedings are in accordance with justice. To do so, would make a mockery of a procedure by which the unrepresented accused person's trial and sentence is subjected to automatic review in order to ensure

that he/she received a fair trial and sentence.

[6] For the aforementioned reasons I decline to endorse the proceedings in respect of each of the above captioned cases to be in accordance with justice and make the following order.

In the result, the following order is made:

1. The proceedings in the matters mentioned in 1 – 9 are not endorsed in terms of s 304 (1) of Act 51 of 1977 to be in accordance with justice.
2. The Registrar is directed to bring this judgment to the attention of the Executive Director of the Office of the Judiciary and the Chief Magistrate, who need to attend to the issues identified in the judgment.

<b>J C LIEBENBERG</b> <b>JUDGE</b>	<b>C CLAASEN</b> <b>ACTING JUDGE</b>