

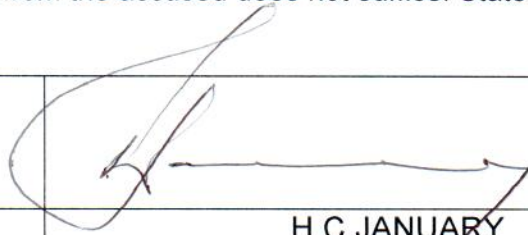
“ANNEXURE 11”
IN THE HIGH COURT OF NAMIBIA

Case Title: <i>The State v Haullemo Helumani</i>	CR 49/2018 Division of Court: Northern Local Division
Heard before: Honourable Ms Justice Tommasi J <i>et</i> Honourable Mr. Justice January J	Delivered on: 5 October 2018
Neutral citation: <i>S v Helumani</i> (CR 49/2018) [2018] NAHCNLD 101 (5 October 2018)	
The order: <ol style="list-style-type: none"> 1. The conviction and sentence are hereby set aside. 2. The matter is remitted to magistrate’s court to record a plea of not guilty in terms of section 113 of the Criminal Procedure Act, 1977 (Act 51 of 1977) and to allow the prosecutor to proceed with prosecution. 	
Reasons for order:	
<p>TOMMASI J (JANUARY J concurring):</p> <ol style="list-style-type: none"> 1. The magistrate convicted the accused of contravening s 31(1)(a) of the ought to have entered a plea of failed to establish, in terms of section 112(1)(b), whether the accused admitted all the elements of the offence and ought to have applied section 113 of the Criminal Procedure Act, 1977 (Act 51 of 1977). 2. In <i>S v Jansen</i> 2006 (1) NR 337 (HC) it was held that to prove a contravention of s 82(1) of the Road Traffic and Transport Act 22 of 1999, i.e. driving under the influence of intoxicating liquor, it is not sufficient for the State to prove mere consumption of intoxicating liquor. The state must be able to prove that the impairment in the driver's ability to drive, if there was any, was caused by the consumption of alcohol. Accused did not admit same <i>in casu</i> 3. In <i>S v Naidoo</i> 1985 (2) SA 32 (N) at 37G it was held that the court not only has to ascertain, where facts outside the knowledge of the accused are admitted, whether the admitted facts, if accepted as correct will establish all the elements of the 	

offence, but also whether the admission is reliable. (*Dictum* applied in *S v Titus & others* 2014 (1) NR 129 (HC). The results of the breathalyzer falls outside the knowledge of the accused and a simple admission from the accused does not suffice. State to produce proof of the analysis.



M A TOMMASI
JUDGE



H C JANUARY
JUDGE

CR 49/2018

**IN THE HIGH COURT OF NAMIBIA: NORTHERN LOCAL DIVISION
HELD AT OSHAKATI: 5 OCTOBER 2018
BEFORE THE HONOURABLE MS JUSTICE TOMMASI J
MR JUSTICE JANUARY J**

In the matter between:

STATE

v

HAULLEMO HELUMANI

ACCUSED

Having considered the matter in chambers and having read the documents filed of record:

IT IS ORDERED THAT:

1. The conviction and sentence are hereby set aside.
2. The matter is remitted to magistrate's court to record a plea of not guilty in terms of section 113 of the Criminal Procedure Act, 1977 (Act 51 of 1977) and to allow the prosecutor to proceed with prosecution.

BY ORDER OF COURT

REGISTRAR

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