



**“ANNEXURE 11”**  
**IN THE HIGH COURT OF NAMIBIA**

<b>Case Title:</b> <i>The State v Thomas Ndliipange &amp; 12 Others</i>	CR 61/2018 <b>Division of Court:</b> Northern Local Division
<b>Heard before:</b> Honourable Ms Judge Tommasi J <i>et</i> Honourable Mr. Judge Cheda J	<b>Delivered on:</b> 19 October 2018
<b>Neutral citation:</b> <i>S v Ndliipange &amp; 12 others</i> (CR 61/2018) [2018] NAHCNLD 111(19 October 2018)	
<b>The order:</b> <ol style="list-style-type: none"> <li>1. The conviction and sentence of accused 1, 6 and 13 are set aside.</li> <li>2. The conviction and sentence of accused 2, 3, 4, 5, 7, 8, 9 10, 11 and 12 are confirmed.</li> </ol>	
<b>Reason for order:</b>	
<p>TOMMASI J (CHEDA J concurring):</p> <ol style="list-style-type: none"> <li>1. The accused were all arrested at or near Soweto/Shoprite Store/Engine Service Station on 17 to 22 August 2018. They were all charged with contravening section 34 (1) read with section 34 (3) of the Immigration Control Act, 1993 (Act 7 of 1993) for unlawfully remaining in Namibian without a valid permit permitting them to remain in Namibia and for having failed to report to an immigration officer.</li> <li>2. The magistrate explained the right to legal representation to all the accused. All the accused pleaded guilty and were questioned in terms of s112 (1)(b). They were sentenced to pay a fine of N\$2000.00 or 6 months imprisonment wholly suspended for 5 years.</li> <li>3. Accused 1 and 6 are 15 years old and accused 13 is 17 years old i.e. juveniles.</li> <li>4. In terms of s 73 and 74 of the Criminal Procedure Act 51 of 1977, juveniles under the age of 18 are to be assisted by their parents or guardians. These provisions are peremptory.</li> </ol>	

5. The learned magistrate failed to explain and apply the provisions of s 73 and 74 and accused 1, 6 and 13 pleaded guilty without being assisted by their parents or guardians.
6. Such failure constitute a serious irregularity in the proceedings which, in the circumstances of this case, tainted the accused's conviction and sentence. The omission negates the accused's right to a fair trial. Under these circumstances it cannot be allowed to stand. (see *S v Lukas* 1999 NR 394 (HC) & *S v M* 2006 (1) NR 156 (HC))

	 19/11/2018
M A TOMMASI JUDGE	M CHEDA JUDGE

CR 61/2018

**IN THE HIGH COURT OF NAMIBIA: NORTHERN LOCAL DIVISION  
HELD AT OSHAKATI: 19 OCTOBER 2018  
BEFORE THE HONOURABLE MS JUSTICE TOMMASI J  
MR JUSTICE CHEDA J**

In the matter between:

**STATE**

**v**

**THOMAS NDLIIPANGE**

**1 ACCUSED**

**PETRUS NDUDOPOSA**

**2<sup>ND</sup> ACCUSED**

**ADRINO SIMON**

**3<sup>RD</sup> ACCUSED**

**KAPAT PAULINO KAULITENEKUA KAMBOBO**

**4<sup>TH</sup> ACCUSED**

**PLOTASIU VENASIU KANIME**

**5<sup>TH</sup> ACCUSED**

**NANDHILA MULUMIKA**

**6<sup>TH</sup> ACCUSED**

**DANIEL THOMAS DIONISION DIMBULUKWENI**

**7<sup>TH</sup> ACCUSED**

**DANIEL IMMANUEL**

**8<sup>TH</sup> ACCUSED**

**ELIFAS DAVID**

**9<sup>TH</sup> ACCUSED**

**PENELAKA PAULUS**

**10<sup>TH</sup> ACCUSED**

**JEREVA JOHANNES**

**11<sup>TH</sup> ACCUSED**

**TUHAFENI NDEMPANDULA**

**12<sup>TH</sup> ACCUSED**

**KAMBANGULA SHIHEPO**

**13<sup>TH</sup> ACCUSED**

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

**IT IS ORDERED THAT:**

1. The conviction and sentence of accused 1, 6 and 13 are set aside.
2. The conviction and sentence of accused 2, 3, 4, 5, 7, 8, 9 10, 11 and 12 are confirmed.

BY ORDER OF COURT

A handwritten signature in black ink, appearing to be a stylized 'R' or 'K' with a loop, positioned above the printed title 'REGISTRAR'.

REGISTRAR

/lk