

“ANNEXURE 11”
IN THE HIGH COURT OF NAMIBIA

Case Title: <i>The State v Peter Haiduwa & 2 others</i>	CR 53/2018 Division of Court: Northern Local Division
Heard before: Honourable Mrs. Justice Tommasi J <i>et</i> Honourable Mr. Justice January J	Delivered on: 1 November 2018
Neutral citation: <i>S v Haiduwa</i> (CR 53/2018) [2018] NAHCNLD 116 (1 November 2018)	
The order: <ol style="list-style-type: none">1. The conviction of the accused is confirmed;2. The regional court magistrate is directed to proceed with sentencing accused 1 and 2 in accordance with the provisions of section 116 of the Criminal Procedure Act, 51 of 1977.	
Reasons for the order:	
<p style="text-align: center;">TOMMASI J (JANUARY J concurring):</p> <ol style="list-style-type: none">1. The accused were charged in the district court with stock theft (4 oxen and 1 cow valued at N\$36 000). They pleaded not guilty but were convicted of theft of 4 oxen. The accused were then committed to the regional court for sentence in terms of section 116 of the Criminal Procedure Act.2. The regional court magistrate was of the opinion that the proceedings were not in accordance with justice and forwarded the matter for review in terms of the provisions of section 116. He reasoned that the accused ought to have been convicted of 5 head of cattle.	

3. This district court magistrate submitted that he was of the view that the complainant had given consent for the exchanged of the cow.
4. Having perused the record and the statement of the presiding officer, it is our view that the factual finding by the magistrate in the district court is supported by the evidence recorded; and there is no reason for this court to disturb his conclusion. The court *a quo* has the advantage of observing witnesses and the learned magistrate concluded that the owner did give permission to exchange. On page 16 of the record the witness seems to contradict herself stating that she said accused 1 can do it, i.e. exchange the barren cow, but in the same breath she testified that she did not give him instructions.
5. The conviction of accused 1 and accused 2 and the acquittal of accused 3 are in accordance with justice and are confirmed.


M A TOMMASI
JUDGE


H C JANUARY
JUDGE



CR 53/2018

**IN THE HIGH COURT OF NAMIBIA: NORTHERN LOCAL DIVISION
HELD AT OSHAKATI: 1 NOVEMBER 2018
BEFORE THE HONOURABLE MS JUSTICE TOMMASI J
MR JUSTICE JANUARY J**

In the matter between:

STATE

v

PETER HAIDUWA

1ST ACCUSED

MICHAEL NDEMUFIKAMA MOSES

2ND ACCUSED

FILLIPUS KUTIMBA SHILONGO

3RD ACCUSED

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

IT IS ORDERED THAT:

1. The conviction of the accused is confirmed;
2. The regional court magistrate is directed to proceed with sentencing accused 1 and 2 in accordance with the provisions of section 116 of the Criminal Procedure Act, 51 of 1977.

BY ORDER OF COURT


REGISTRAR
/lk