

“ANNEXURE 11”
IN THE HIGH COURT OF NAMIBIA

Case Title: <i>The State v Angula Simon Gideon Laliinye</i>	CR 54/2018
	Division of Court: Northern Local Division
Heard before: Honourable Ms Justice Tommasi J <i>et</i> Honourable Mr Justice January J	Delivered on: 1 November 2018
Neutral citation: <i>S v Laliinye</i> (CR 54/2018) [2018] NAHCNLD 117 (1 November 2018)	
The order: <ol style="list-style-type: none"> 1. The conviction and sentence in respect of count 1 and 2 are confirmed. 2. The conviction and sentence in respect of count 3 are set aside. 3. The matter is remitted to the district court in terms of the provisions of section 312 of the Criminal Procedure Act, 51 of 1977 with the direction to act in terms of section 113 of the Criminal Procedure Act, 51 of 1977 in respect of count 3. 	
Reasons of the order:	
TOMMASI J (JANUARY J concurring): <ol style="list-style-type: none"> 1. The accused was convicted of two counts of possession of a fire-arm without a licence (contravening section 2 of Act 7 of 1996) and being in possession of housebreaking implements (contravening section 9 (1) of Proclamation 27 of 1920). 2. The conviction and sentence in respect of count 1 and 2 are in accordance with justice and are confirmed. 3. The accused pleaded guilty to count 3 and when questioned admitted that these implements were in the car with him. The accused was asked why he was in possession of the items and he responded as follow: “I went (sic) to use the hammer to fix the zinc house in Okahao and I used the bolt cutter to cut the zinc sheets and I used the sharp object to dig a hole to fix the poles and the knife I always carry along wherever I am 	

going.” He was asked whether he has any documentary proof or excused to be in possession of the items and he answered “No”

4. The above answers indicate that the accused is raising the defense that he has a lawful excuse. The magistrate ought to have recorded a plea in terms of section 113 of the Criminal Procedure Act.
5. In *S v Kamadulunge* 2007 (2) NR 608 (HC) Van Nieker J summarized the law in respect of the penalty provision at page 604 para 6 as follow:” The maximum sentence provided for by Proc 27 pf 1920 is a” a penalty of P20 (i.e. N\$40) or in default of payment imprisonment for a period not exceeding six months with or without hard labour or to either such penalty or such imprisonment’. By virtue of the provisions of s 281 of the Criminal Procedure Act 51 of 1977, the fine of N\$40 is considered to be a fine of N\$50 and the imprisonment with or without hard labour is construed to be a reference to imprisonment only. The effect therefore is that the maximum sentence is one of a fine of N\$50 or six months’ imprisonment.”
The sentence imposed of N\$2000 or 12 month’s imprisonment is therefore incompetent.

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M A TOMMASI
JUDGE



HC JANUARY
JUDGE



CR 54/2018

**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

ANGULA SIMON GIDEON LALIINYE

ACCUSED

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

IT IS ORDERED THAT:

1. The conviction and sentence in respect of count 1 and 2 are confirmed.
2. The conviction and sentence in respect of count 3 are set aside.
3. The matter is remitted to the district court in terms of the provisions of section 312 of the Criminal Procedure Act, 51 of 1977 with the direction to act in terms of section 113 of the Criminal Procedure Act, 51 of 1977 in respect of count 3.

BY ORDER OF COURT



REGISTRAR
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