

**"ANNEXURE 11"**  
**IN THE HIGH COURT OF NAMIBIA**

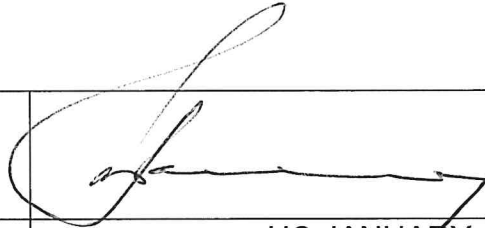
<b>Case Title:</b> <i>The State v Set-Son Simaneka Ihuhwa</i>	CR 55/2018
	<b>Division of Court:</b> Northern Local Division
<b>Heard before:</b> Honourable Ms Justice Tommasi J <i>et</i> Honourable Mr Justice January J	<b>Delivered on:</b> 1 November 2018
<b>Neutral citation:</b> <i>S v Ihuhwa</i> (CR 55/2018) [2018] NAHCNLD 118 (1 November 2018)	
<b>The order:</b> <ol style="list-style-type: none"><li>1. The conviction and sentence in respect of count 1 are set aside;</li><li>2. The matter is remitted to the magistrates' court in terms of s 312(1) of the Criminal Procedure Act, 51 of 1977 with the direction to act in terms of section 113 of the Criminal Procedure Act.</li></ol>	
<b>Reasons for the order:</b>	
<p>TOMMASI J (JANUARY J concurring):</p> <ol style="list-style-type: none"><li>1. The accused was charged with driving under the influence of intoxicating liquor in contravention of section 82(1) (a) of the Road Traffic and Transport Act, 22 of 1999 (count 1) and escape before lock up in contravention with section 51 of the Criminal Procedure Act, Act 77 of 1977 (count 2).</li><li>2. The conviction and sentence in respect of count 2 is in accordance with justice and is confirmed.</li><li>3. The accused pleaded guilty and when questioned in terms of the provisions of section 112 (1)(b) of the Criminal Procedure Act, the accused admitted that he drank 4 x 330ml beer and admitted that the beer has a narcotic effect.</li><li>4. In order to prove a contravention of s 82(1) of the Road Traffic and it is not sufficient for the accused to admit to mere consumption of intoxicating liquor. He must also</li></ol>	

admit that the skill and judgment normally required in the manipulation of a motor car was diminished or impaired as a direct result of the consumption of alcohol. (See *S v Jansen* 2006 (1) NR 337 (HC)).

5. The learned magistrate ought to have recorded a plea of not guilty in terms of section 113 of the Criminal Procedure Act. The conviction and sentence are therefore not in accordance with justice and are set aside.



M A TOMMASI  
JUDGE



HC JANUARY  
JUDGE



CR 55/2018

**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

**SET-SON SIMANEKA IHUHWA**

**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 are set aside;
2. The matter is remitted to the magistrates' court in terms of s 312(1) of the Criminal Procedure Act, 51 of 1977 with the direction to act in terms of section 113 of the Criminal Procedure Act.

**BY ORDER OF COURT**



**REGISTRAR**  
/lk