

"ANNEXURE 11"
IN THE HIGH COURT OF NAMIBIA

Case Title: <i>The State v Pineas Heita</i>	Case No: CC 14/2016
	Division of Court: Northern Local Division
Heard before: Honourable Ms Justice Salionga	Heard on: 5 November 2018 Delivered on: 6 November 2018
Neutral citation: <i>S v Heita</i> (CC 14/2016) [2018] NAHCNLD 124 (6 November 2018)	
The order: Having heard Mr Shakumu counsel for the applicant and Mr Gawaseb, counsel for the respondent and having read the documents filed, the following order is made: <ol style="list-style-type: none">1. The point <i>in limine</i> by the State is granted;2. The request for further particulars in terms of s 87(1) of the Criminal Procedure Act 51 of 1977 is refused.	
Reasons for order:	
SALIONGA J: The matter before court is a request for further particulars. The accused who is not satisfied with the manner in which count 1 and 2 are framed, launched an application in terms of s 87(1) of the Act.	

This court is required to make a ruling on whether there is an application before court and whether the accused has a reasonable need for the additional information for the preparation of his defence as per *S v Cooper & others* 1976 (2) SA 875 (T).

Applicant argued that in order to enable him to properly plead to the charges and to prepare for his defence, further particulars should be provided. In his submissions, counsel for the defence abandoned the particulars requested with regard to the holding of the bonnet vehicle in paragraph 1. He however proceeded with the alleged fall in para 2 and medical treatment in para 3 of the request.

Section 87 is couched in the following terms:

'87 Court may order delivery of particulars

(1) An accused may at any stage before any evidence in respect of any particular charge has been led, in writing request the prosecution to furnish particulars or further particulars of any matter alleged in that charge, and the court before which a charge is pending may at any time before any evidence in respect of that charge has been led, direct that particulars or further particulars be delivered to the accused of any matter alleged in the charge, and may, if necessary, adjourn the proceedings in order that such particulars may be delivered.'

The request for further particulars was filed on 17 May 2017. The State refused the request on 13 September 2017, stating that the defence has full disclosure and the State is not obliged to provide further particulars in such cases.

On the 25th of October 2018, the State requested the defence to bring a substantive application for further particulars as the State was ready to respond on the 5th of November 2018.

No proper application to compel was brought by the defence as requested instead the defence proceeded to argue the matter from the bar. No notice of motion nor affidavit was filed in support of the application made.


The State refused to furnish further particulars alleging that the information requested is contained in the contents of the docket disclosed to the accused, a fact that was not disputed by the defence.

The applicant did not dispute that, nor did he say the requested information is not available to him or is ambiguous or confusing.

After considering the indictment and the summary of the substantial facts, coupled with the disclosure, which is not disputed, I am of the view that the disclosure provided by the State is sufficient to inform the applicant of the case against him. It would appear that the pattern of the state case emerges from the indictment read with the summary of substantial facts, namely accused as a driver of the pick-up motor vehicle increased the speed while the deceased was holding onto the car bonnet until she fell from the car. The accused thereafter bumped or drove over her body. The deceased died two days after the incident on account of the injuries she sustained when she fell from the car and was bumped.

In conclusion, the disclosure was made and the State is not obliged to furnish particulars as to the evidence. The defence filed a request to the State for further particulars which was rejected. They had ample time to file the correct application to compel the state but failed to do so and this request filed is clearly tantamount to delaying tactics.

In the result the request for further particulars in terms of s 87(1) of Act 51 of 1977 does not satisfy the legal requirements for an application to compel the State to provide further particulars and it is therefore refused.


J. T. SALONGA
JUDGE

CASE NO.: CC 14/2016

IN THE HIGH COURT OF NAMIBIA: NORTHERN LOCAL DIVISION
HELD AT OSHAKATI: 6 NOVEMBER 2018
BEFORE THE HONOURABLE MS JUSTICE SALIONGA J

In the matter between:

THE STATE

v

PINEAS HEITA

ACCUSED

Having heard **Mr. Gaweseb**, Counsel for the **State** and **Mr. Shakumu**, Counsel for the **Accused** and having read the documents filed of record:

IT IS ORDERED THAT:

1. The point *in limine* by the State is granted;
2. The request for further particulars in terms of s 87(1) of the Criminal Procedure Act 51 of 1977 is refused.

BY ORDER OF COURT



REGISTRAR
M.N

TO: ADV. GAWESEB
 [OFFICE OF THE PROSECUTOR-GENERAL]

AND TO: MR. SHAKUMU
 KISHI-SHAKUMU & COMPANY INC. [private instruction]