

“ANNEXURE 11”
IN THE HIGH COURT OF NAMIBIA

Case Title: <i>The State v Thomas Nghixuluvali Fabianus</i>	Case No: OSH-CRM-4064/2017 CR 1/2019
	Division of Court: High Court Northern Local Division
Heard before: Honourable Justice Tommasi J Honourable Justice Salionga J	Delivered on: 24 January 2019
Neutral citation: <i>S v Fabianus</i> (CR 01/2019) [2019] NAHCNLD 1 (24 January 2019)	
The order: <ol style="list-style-type: none">1. Convictions and sentences in respect of count 1, 3 and 4 are hereby confirmed.2. The learned magistrate is directed to summon the accused in court for the purpose of applying s 51 of the Road Traffic and Transport Act 22 of 1999.	
Reasons for order:	
SALIONGA J (TOMMASI J concurring): <ol style="list-style-type: none">1. The accused person was convicted for contravening the Road Traffic and Transportation Act 22 of 1999 and was sentenced in varying amounts of fines upon them , in default of which imprisonment of varying periods were imposed. However the magistrate did not apply the provisions of s 51 of the Act which reads: Suspension of licence upon conviction of certain offences 51(1) where a person who is the holder of a driving licence is convicted by a court of an offence –<ol style="list-style-type: none">(a) under section 78(1) (a), (b) or (c) in the case of an accident which resulted in the death or injury of a person;(b) under section 80(1) of driving a vehicle recklessly or;(c) under section 82(1)(2), (5) or (9)	

2. The court shall, apart from imposing a sentence expected to, issue an order whereby every driving licence held by such person is suspended in accordance with the provisions of subsection (2).



3. Liebenberg J, in the case of the *S v Nekaya* (CR 19/2017) [2017] NAHCMD 70 (10 March 2017)(unreported) correctly observed that:

'[3]... The provisions of s 51 must first be explained to accused where after, he be afforded the opportunity to lead evidence and/or address the court as to the period for which his licence should be suspended.

4. The provision of section 51 of the Act is peremptory and the magistrate conceded in her reply that it was not applied.

5. In the result the following order is made:

- Convictions and sentences in respect of count 1, 3 and 4 are hereby confirmed.
- The trial magistrate is directed to summon the accused for purposes of applying the provisions of s 51 of the Act.

 J T SALIONGA JUDGE	 M A TOMMASI JUDGE
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IN THE HIGH COURT OF NAMIBIA: NORTHERN LOCAL DIVISION
HELD AT OSHAKATI: 24 JANUARY 2019
BEFORE THE HONOURABLE MS JUSTICE TOMMASI J
MS JUSTICE SALIONGA J

In the matter between:

STATE

v

THOMAS NGHIXULUVALI FABIANUS

ACCUSED

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

IT IS ORDERED THAT:

1. Convictions and sentences in respect of count 1, 3 and 4 are hereby confirmed.
2. The learned magistrate is directed to summon the accused in court for the purpose of applying s 51 of the Road Traffic and Transport Act 22 of 1999.

BY ORDER OF COURT



REGISTRAR

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