


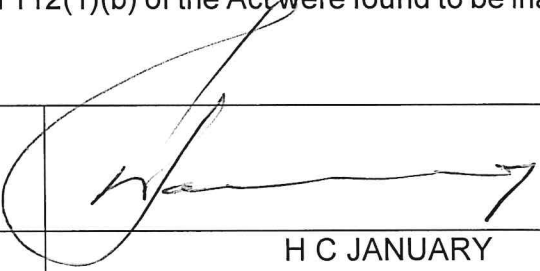
ANNEXURE 11"

IN THE HIGH COURT OF NAMIBIA

Case Title: <i>The State v Daniel Nakale</i>	Case No: 212/2018 CR 17/2019
	Division of Court: Northern Local Division
Heard before: Honourable Mr. Justice January <i>et</i> Honourable Ms. Justice Salionga	Delivered on: 16 May 2019
Neutral citation: <i>S v Nakale</i> (CR 17/2019) [2019] NAHCNLD 48 (16 May 2019)	
The order: <ol style="list-style-type: none">1. The conviction and sentence are set aside.2. The matter is remitted to the Magistrate to properly apply the provisions of s 112(1)(b) of the Criminal Procedure Act, Act 51 of 1977 and to thereafter dispose the matter in accordance with the law.3. The Magistrate is further directed to sentence the accused with due regard to any period of imprisonment already served by the accused.	
Reasons for Order	
SALIONGA J (JANUARY J concurring): <ol style="list-style-type: none">1. The accused was charged with assault with intent to do grievous bodily harm. He pleaded guilty to the charge and was convicted. He was sentenced to N\$2000 or 14 months imprisonment in default of payment.2. When the matter came on automatic review I wanted to know from the learned magistrate as to how she could have been satisfied that accused intended to cause	

grievous bodily harm if no question in that regards was asked. I further requested explanation from her why the original record shows that accused was charged and convicted of assault with intent to do grievous bodily harm but the review sheet indicates a conviction of robbery.

3. She replied that although no question was asked on that aspect it just slipped her mind as the accused did beat the complainant on the head and on the arm which got dislocated. In her view it is obvious that he intended to cause grievous bodily harm.
4. On the second query the magistrate conceded it was an error and the review sheet is now corrected. I will not take it further.
5. It is clear from the magistrate's response that no question whether accused intended to do or cause grievous harm was asked and as such the magistrate was not supposed to be satisfied that accused admitted all the elements off the offence charged.
6. Questions asked in terms of section 112(1)(b) of the Act were found to be inadequate.

	
J.T. SALIONGA JUDGE	H C JANUARY JUDGE

CR 17/2019

**IN THE HIGH COURT OF NAMIBIA: NORTHERN LOCAL DIVISION
HELD AT OSHAKATI: 16 MAY 2019
BEFORE THE HONOURABLE MR JUSTICE JANUARY J
MS JUSTICE SALIONGA J**

In the matter between:

STATE

v

DANIEL NAKALE

ACCUSED

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

IT IS ORDERED THAT:

1. The conviction and sentence are set aside.
2. The matter is remitted to the Magistrate to properly apply the provisions of s 112(1)(b) of the Criminal Procedure Act, Act 51 of 1977 and to thereafter dispose the matter in accordance with the law.
3. The Magistrate is further directed to sentence the accused with due regard to any period of imprisonment already served by the accused.

BY ORDER OF COURT



REGISTRAR

/lk