

**“ANNEXURE 11”**  
**IN THE HIGH COURT OF NAMIBIA**

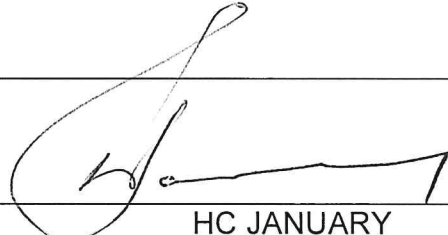
<b>Case Title:</b> <i>The State v Lukas Mwetupunga Nghishaaluka</i>	<b>Case No: 113/2019</b> CR 20/2019 <b>Division of Court:</b> Northern Local Division
<b>Heard before:</b>  Honourable Mr. Justice January <i>et</i> Honourable Ms. Justice Salionga	<b>Delivered on:</b>  23 May 2019
<b>Neutral citation:</b> <i>S v Nghishaaluka</i> (CR 20 /2019) [2019] NAHCNLD 55 ( 23 May 2019)	
<b>The order:</b>  1. The conviction for failure to attend court and sentence of N\$100 or 20 days imprisonment imposed on the accused are hereby set aside.	
<b>Reason for order</b>	
SALIONGA J (JANUARY J concurring):  1. The accused was convicted in the Outapi magistrate’s court on the charge of Possession of a firearm without a license. He was sentenced to pay a fine of N\$3000 or 12 months imprisonment. The conviction and sentence are in order.  2. The record reveals, however an irregularity that needs to be set aside.  3. The accused was granted bail but failed to appear on the 29 <sup>th</sup> of August 2018. Bail was provisionally cancelled and forfeited and final date for cancellation and forfeiture was 9 May 2017. The bail was indeed finally forfeited.  4. On 28 September 2018 the accused appeared on a warrant of arrest and the magistrate enquired in a summary manner into the failure by the accused to attend court. The court not satisfied with the explanation given by the accused, convicted him of failing to attend court and sentenced him to a fine of N\$100 or 20 days imprisonment.	

5. The summary procedure adopted by the learned magistrate is ultra vires. See  
*S v Muronga* 2004 NR 134.


6. The above order is made.



J T SALIONGA  
JUDGE



HC JANUARY  
JUDGE



CR 20/2019

IN THE HIGH COURT OF NAMIBIA: NORTHERN LOCAL DIVISION  
HELD AT OSHAKATI: 23 MAY 2019  
BEFORE THE HONOURABLE MR JUSTICE JANUARY J  
LADY JUSTICE SALIONGA J

In the matter between:

**STATE**

V

**LUKAS MWETUPUNGA NGHISHAALUKA**

**ACCUSED**

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

**IT IS ORDERED THAT:**

1. The conviction for failure to attend court and sentence of N\$100 or 20 days imprisonment imposed on the accused are hereby set aside.

**BY ORDER OF COURT**



**REGISTRAR**

/lk

J.T.S