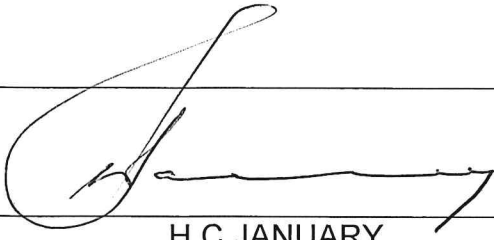


“ANNEXURE 11”
IN THE HIGH COURT OF NAMIBIA

Case Title: <i>The State v Michael Walusiku</i>	Case No: CA 55/2013 Leave to Appeal
	Division of Court: Northern Local Division
Heard before: Honourable Ms Justice Tommasi J <i>et</i> Honourable Mr. Justice January J	Delivered on: 31 January 2019
Neutral citation: <i>S v Walusiku</i> (CA 55/2013) [2019] NAHCNLD 10 (31 January 2019)	
The order: <ol style="list-style-type: none">1. The application for leave to appeal is refused.	
Reasons for order:	
JANUARY J (TOMMASI J concurring): <ol style="list-style-type: none">1. The respondent successfully appealed to this court against his conviction for a contravention of section 2(1)(a) of the Combating of Rape Act, Act 8 of 2000 - Rape.2. The court of appeal identified an irregularity in that the learned magistrate <i>mero motu</i> obtained a statement under oath from a person who did not testify in court. The magistrate enquired, after an inspection <i>in loco</i>, about the existence of a school nearby the scene of crime. The appellant was never afforded the opportunity to cross-examine the person who provided the statement.3. The statement obtained reflects on the credibility of the applicant.	

4. This court is not convinced that another court would come to a different conclusion.



H C JANUARY
JUDGE



TOMMASI
JUDGE

**IN THE HIGH COURT OF NAMIBIA: NORTHERN LOCAL DIVISION
HELD AT OSHAKATI: 31 JANUARY 2019
BEFORE THE HONOURABLE MR JUSTICE JANUARY**

In the matter between:

THE STATE

APPLICANT

v

MICHAEL WALUSIKU

RESPONDENT

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

IT IS ORDERED THAT:

1. The application for leave to appeal is refused.

BY ORDER OF COURT


REGISTRAR
/hsh