

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION, OSHAKATI

APPEAL JUDGMENT

“ANNEXURE 11”

Case Title: <i>David Munima Lenga v The State</i>	Case No: HC-NLD-CRI-APP-CAL-2020/00007
	Division of Court: Northern Local Division
Heard before: Honourable Mr. Justice January J <i>et</i> Honourable Ms. Justice Salionga J	Heard on: 6 August 2020 Delivered on: 27 August 2020
Neutral citation: <i>Lenga v S</i> (HC-NLD-CRI-APP-CAL-2020/00007) [2020] NAHCNLD116 (27 August 2020)	
The order: <ol style="list-style-type: none">1. The conviction and sentence of contravening section 3(b) read with sections 1, 3(ii), 7, 8, 10, 14 and Part III of the schedule of Act 41 of 1971-Possession of potentially dangerous dependence-producing drugs (cannabis) is set aside in relation to both appellants.2. In case the appellant paid the fines, they should be refunded.	

Reasons for the order	
<p>JANUARY J (SALIONGA J concurring):</p> <p>[1] The appellants were charged for contravening section 3(b) read with sections 1, 3(ii), 7, 8, 10, 14 and Part III of the schedule of Act 41 of 1971 (the Act)-Possession of potentially dangerous dependence-producing drugs (cannabis). They were each sentenced to N\$1000 or six months imprisonment. This is a wrong charge. Cannabis is not listed in the schedules to the Act under Part III as a dangerous dependence-producing drug but listed under Part I as a prohibited dependence-producing drug.</p> <p>[2] The magistrate further slavishly followed the submission by the public prosecutor and convicted the accused persons in terms of section 112(1)(a) of the Criminal Procedure Act, Act 51 of 1977 (the CPA). This court has in numerous cases stated that section 112(1)(a) is for trivial cases. Considering the prescribed sentences in the Act, possession of cannabis is not a trivial offence.</p> <p>[3] Mr Gaweseb who represented the State in this appeal conceded that the appellants were charged with a wrong charge. He submitted that the conviction and sentence should be set aside, the matter be remitted to the magistrate for the appellants to be charged with the correct charge and to apply section 112(1)(b) of the CPA. I am not prepared to do that. It is the prerogative of the prosecution to decide if they wish to prosecute with the correct charge or not.</p> <p>[4] The magistrate in any event left the magistracy. Further we were informed that one of the appellants passed away in the meantime.</p>	
Judge(s) signature	Comments:

January J	NONE
Salionga J	NONE
Counsel	
Appellant	Respondent
Mr D M Lenga Of Okahakiingondjolo, Oshana	Mr T Gaweseb Of Office of the Prosecutor-General, Oshakati