

“ANNEXURE 11”

**IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION, OSHAKATI
REVIEW JUDGMENT**

Case Title: <i>S v Zarambua Kapi</i>	CR No: 31/2020
	Division of Court: Northern Local Division
Heard before: Honourable Mr. Justice January J et Honourable Ms Justice Salionga J	Delivered on: 10 June 2020
Neutral citation: <i>S v Kapi</i> (CR 31/2020) [2020] NAHCNLD 68 (10 June 2020)	
IT IS ORDERED THAT: <ol style="list-style-type: none">1. The contravention of section 82(1) (b) of Act 22 of 1999 of the Act on alternative count is corrected to read a contravention of section 82 (2) of the Act.2. The conviction and sentence are confirmed.	
Reasons for the above order:	
SALIONGA J (JANUARY J concurring): [1] Accused in this matter was charged with main count of driving under the influence of intoxicating liquor in contravening section 82 (1) (a) of the Road Traffic and Transportation Act 22 of 1999 with alternative count of driving with an excessive blood –alcohol level in contravening section 82(1) (b) of Act 22 of 1999 as per the charge sheet He pleaded guilty on alternative count and after questioning he was found guilty as charged and convicted accordingly. [2] The matter was sent on automatic review. I requested the magistrate to (1) explain	

what happened to the main charge? (2) Whether on the alternative count, the section contravened as indicated on the annexure to the charge sheet is a correct section.

[3] The learned magistrate in his reply explained that the main charge was withdrawn and the court is satisfied with explanation given. On the alternative count the magistrate conceded stating that the section cited by the prosecutor on the alternative charge is incorrect. The correct section should be a contravention of section 82 (2) of Act 22 of 1999.

[4] From the record it is apparent that the charge erroneously refers to a contravention of section 82 (1) (b) of the Act which deals with the offence of driving a vehicle while under the influence of intoxicating liquor or drug having a narcotic effect. The section cited however is inconsistent with the particulars of the charge to which the accused pleaded as it is a different offence.

[5] Although charges are drafted by prosecutors, magistrates are not absolved from verifying that the section in the charge is correct and correspond to the statutory provisions.

[6] The issue of attaching a wrong label to a charge was clearly articulated in *S v Goagoseb*¹ where the court held that;... 'If the body of the charge is clear and unambiguous in its description of the act alleged against the accused... the attaching of a wrong label to the offence or an error made in quoting the charge, the statute or statutory regulation alleged to have been contravened may be corrected on review if the court is satisfied that the conviction is in accordance with justice or on appeal if it is satisfied that no failure of justice has in fact resulted therefrom.'

[7] Although there was an error in quoting the statutory provision of the Act contravened, such error is not fatal. The offence was correctly outlined and no prejudice suffered. The correct statutory provision for the offence of driving with excessive blood alcohol is a contravening section 82 (2) of the Act and the magistrate rightly conceded.

[8] In the result the following order is made.

1. The contravention of section 82(1) (b) of Act 22 of 1999 of the Act on alternative

¹ (CR 64/2018) [2018] NAHCMD 256 256 (23 August 2018).

count is corrected to read a contravention of section 82 (2) of the Act 2. The conviction and sentence are confirmed:	
J T SALIONGA JUDGE	H C JANUARY JUDGE