



LEGAL CHALLENGES

LOIDE ANGULA

OFFICE OF THE PROSECUTOR- GENERAL, NAMIBIA



Why?

- Accused persons bring legal challenges to avoid going to trial at all costs.
- If successful, may lead to acquittals.
- conviction based asset forfeiture proceedings fall away
- Legal challenges mostly emanate from conduct of LEA as it relates to their powers (investigations, arrests and search and seizure)



- Adjudication by the Court: number of years for sentence, value of offence, location
- LEA Investigations- restricted: location unless bilateral agreements in place and Mutual Legal assistance, empowering statutes

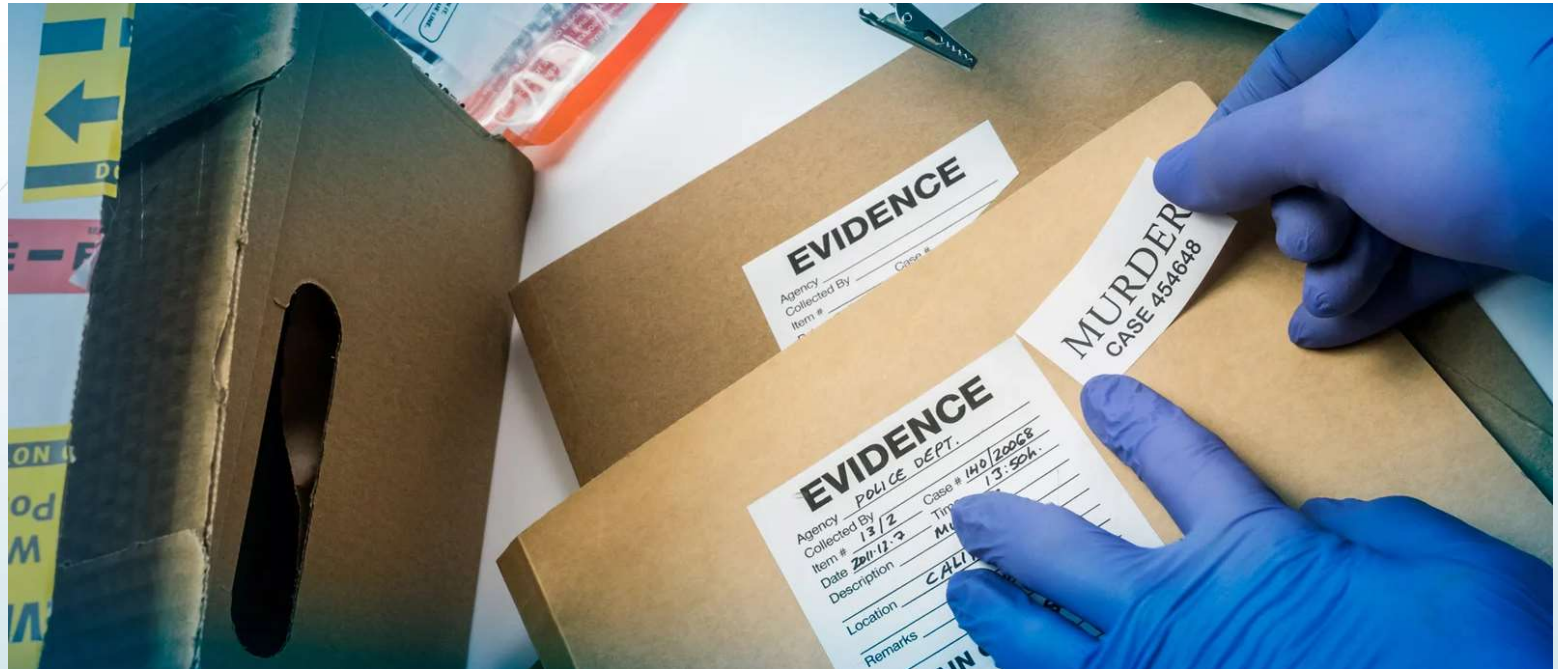


LEA's Authority to investigate

Authority of various agencies to investigate specific offences.

Nampol= any offence

ACC= corrupt activities ito ACC Act



Collection of evidence

- Chain of custody (intact)
- Retrieving data from electronic devices
- Privileged information (marital, legal, doctor-patient)



Normally challenge the contents of the warrant- S v Amushelelo

Search warrants= if invalid affects evidence collected therefrom

Arrest warrant= If invalid arrest unlawful

*In Namibia, setting aside of warrants due to technicalities does not end the proceedings, if defect is remedied via new warrants, they can still be executed and proceedings continue



Objection to Charges –

- does not comply with provisions of CPA,;
- Does not set out essential elements of offence;
- Does not disclose offence
- Accused not correctly named or described in charge
- Does not contain sufficient particulars of any matter alleged therein

* Accused person gives notice to prosecutor to remedy defective charge if not remedied, court may reject it to be invalid.



Tamson Fitty
Hatuikulipi



Jóhannes
Stefánsson



Thorsteinn Már
Baldvinsson



Bernhard Esau



James Hatuikulipi



Sacky Shanghala



Ricardo Gustavo



Victória de
Barros Neto

Kickback Kings

“Before everyone wakes up, we need to move ...”



CASE STUDY: FISHROT

- Former Minister of Fisheries, Former Minister of Justice (at time of alleged commission of offence also held position of Director: Law Reform Commission and Attorney General) and other prominent business personalities in Namibia.
- Allegations of corrupt allocation of horse mackerel fishing quotas.
- Charged with Racketeering, Corruption, Money laundering, Fraud, theft and tax evasion.
- Criminal case set down for trial in October 2023
- PG obtained a restrained order in respect of accused persons' properties



FISHROT- CRIMINAL CASE

- **Arrest warrants:** Accused persons were arrested on 15 November 2019. brought an urgent application challenging the contents of their warrants of arrest. They were released and re-arrested on 26 November 2019.
- **Delays:** During August 2021, State brought an application for joinder of criminal cases (same modus operandi, same accused persons, would lead to duplication of presentation of evidence). Accused opposed, however, Court granted State's application.
- **Recusal:** Accused persons brought application for recusal of trial judge. Application was dismissed by SC, currently challenging SC decision.
- **Evidence:** Accused's challenging authority of ACC to investigate racketeering and money laundering offences under POCA.



Legal challenges in other
jurisdictions?