

CASE NO. CA41/2009

NOT REPORTABLE

IN THE HIGH COURT OF NAMIBIA

In the matter between:

GIDEON USEB

APPELLANT

and

THE STATE

RESPONDENT

CORAM: HOFF, J et NDAUENDAPO, J

Heard on : 12 November 2010

Delivered on: 12 November 2010 (*Ex tempore*)

APPEAL JUDGMENT

HOFF, J: [1] The appellant in this matter was convicted in the Regional Court on a charge of rape and he was sentenced to 15 years imprisonment. It is common cause that the charge sheet and the cassette on which the proceedings were recorded in the Court *a quo* went missing. Furthermore, the presiding officer as well as the prosecutor in the Court *a quo*, have left the services of the State and the record can not be reconstructed.

[2] It is trite law that in these circumstances, the conviction as well as the sentence cannot stand.

[3] In the result, this Court makes the following Orders:

1. The conviction and the sentence are set aside.
2. The Prosecutor General has the prerogative to institute criminal proceedings against the appellant afresh if she so wishes.

HOFF, J:

I agree

NDAUENDAPO, J

ON BEHALF OF THE APPELLANT:

MR VAN VUUREN

Instructed by:

KRUGER, VAN VUUREN & CO.

ON BEHALF OF THE RESPONDENT:

ADV. NYONI

Instructed by:

OFFICE OF THE PROSECUTOR GENERAL