



CASE NO: CA 57/2010

NOT REPORTABLE

IN THE HIGH COURT OF NAMIBIA

In the matter between:

**DANIEL FEREGANO
APPELLANT**

and

**STATE
RESPONDENT**

CORAM: HOFF J

Heard on: 14 October 2011

Delivered on: 14 October 2011 (*Ex tempore*)

JUDGMENT

HOFF J: [1] The appellant was arraigned in the Regional Court and convicted on one count of rape and sentenced to 10 (ten) years imprisonment of which 4 (four) years were suspended for 5 (five) years on certain conditions.

[2] The appellant filed a Notice of Appeal 5 (five) months late. Having failed to file the Notice of Appeal within the prescribed time it was incumbent upon the appellant to approach this Court and apply for Condonation of the late filing of his Notice of Appeal.

[3] On the 11 April 2011 this Court heard the condonation application. This Court refused to condone the late filing of the Notice of Appeal. Firstly, on the basis that the appellant did not provide the Court with an acceptable explanation for his delay in filing the Notice of Appeal late. In fact it appears that the appellant tried to mislead this Court in this regard. Secondly, this Court was of the view that there were no prospects of success on appeal on the merits of the case.

[4] The application for condonation was rejected and the appeal was struck from the role.

[5] Subsequently the applicant again filed certain papers and it appears that he is now applying to this Court to have the appeal re-instated. Mrs Nyoni who appears on behalf of the respondent, the State, submitted that this Court at this stage may not again hear the appeal because the Court is *functus officio*. This means that this Court has already pronounced itself at a previous occasion on the same issue and cannot now reconsider it for a second time. Mrs Nyoni has referred the Court to certain case law as authority for her submission that this Court has become *functus officio*. I agree with her submission as well as the authorities referred to in support of that submission.

[6] In the matter of *West Rand Estates Limited versus New Zealand Insurance Company Ltd* 1926 AD 173. The Court expressed itself as follows and I quote, "The general principal now well established in our law is that once a Court has

duly pronounced a final judgment or order it has itself no authority to correct, alter or supplement it. The reason is that it thereupon becomes *functus officio*: its jurisdiction in a case having been fully and finally exercised, its authority over the subject matter as seised”.

[7] This Court for the reasons mentioned therefore cannot entertain this second appeal. If the appellant is not satisfied with the ruling of this Court given on the 11 April 2011 then its only recourse is to appeal to the Supreme Court of Namibia.

[8] This matter is accordingly struck from the roll.

HOFF J

I agree

SIBOLEKA, J

**COUNSEL ON BEHALF OF THE APPELLANT:
PERSON**

IN

Instructed by :

**COUNSEL ON BEHALF OF THE RESPONDENT:
NYONI**

ADV.

**Instructed by:
GENERAL**

OFFICE OF THE PROSECUTOR-