



NOT REPORTABLE

CASE NO: CA 59/2008

IN THE HIGH COURT OF NAMIBIA

MAIN DIVISION

HELD AT WINDHOEK
(IN CHAMBERS)

In the matter between:

DAWID DAVOS SWARTBOOI

1ST APPELLANT

RIAAN ARON BASSON

2ND APPELLANT

ALBERTUS ROOI

3RD APPELLANT

and

THE STATE

RESPONDENT

CORAM: HOFF, J

In Chambers: 29 June 2009

Delivered on: 14 March 2012

JUDGMENT

Application for leave to appeal i.t.o Sec. 310(1) read with Sec 310(2) of CPA

HOFF, J: [1] This is an application for leave to appeal in terms of the provisions of section 310(1) read with section 31-(2) of the Criminal Procedure Act, Act 51 of 1977 as amended.

[2] The three accused persons were convicted in the magistrate's court, sitting at Keetmanshoop, of the crime of housebreaking with intent to steal and theft and each one was sentenced to twelve months imprisonment wholly suspended for five years on condition that the accused is not convicted of the crime of housebreaking with intent to steal and theft committed during the period of suspension.

[3] The matter was set down for hearing on 29 June 2009.

[4] In *S v Mujiwa* 2007 (1) NR 34 Muller J who analysed the procedure in terms of section 310(1) held *inter alia* that a written notice of an application in terms of section 310(1) must be served on an accused person and that the application for leave to appeal is heard by a judge in chambers and does not require a hearing.

[5] The Prosecutor-General appealed against the sentence imposed by the magistrate.

In terms of section 310(1) the accused may within a period of 10 days of the serving of the notice upon him lodge a written submission with the registrar who in turn shall submit such notice to the judge who is to hear the application.

[6] I have perused the documents filed but I was unable to find any notice served on any one of the accused persons.

[7] In the circumstances the application is not properly before me and stands to be struck off the roll.

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

The application is accordingly struck from the roll.

HOFF, J