

NOT REPORTABLE

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case No: CA 67/2012

In the matter between:

PIETER VISAGIE

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation: *Visagie v State* (CA 67/2012) [2013] NAHCMD 44 (22 February 2013)

Coram: UEITELE, J and UNENGU, AJ

Heard: 22 February 2012

Delivered: 22 February 2013

ORDER

- (i) That the appeal is removed from the roll.
- (ii) That the record is returned to the Clerk of the Court, Windhoek at Mungunda Street for corrections of defects and mistakes in the record of proceedings and thereafter to submit the record to the Registrar to assign a date for the hearing of the appeal after consultation with the parties.

JUDGMENT

UNENGU AJ (UEITELE J) concurring:

[1] This is an appeal by the appellant against his conviction and sentence from the judgment of the Divisional Court for the Windhoek Regional Division delivered on 25 June 2012 and 6 July 2012 respectively.

[2] The appellant filed his Notice and grounds of Appeal on the 19 July 2012 with the Clerk of the Court at the Magistrate's Court, Mungunda Street in Katutura, Windhoek.

[3] The Clerk of the said Court, instead of presenting the full record of the proceedings with the Notice of Appeal and the grounds thereof to the magistrate who convicted and sentenced the appellant – who is Mr Endjala, for his reasons of both the conviction and sentence, the record was submitted to Ms Usiku. Ms Usiku dealt with the bail application, not with the criminal proceedings as such.

[4] That being the case, Ms Usiku then issued a Certificate of Accurate Report in which she certified that the notes were the true record of the State versus Peter Visagie, and was an accurate report of the proceedings in the Magistrate's Court Katutura, which was tried before her on 2 November 2012. This Certificate might be of the bail proceedings which took place before her. However, her comments on the reasons for convictions and sentence cannot be correct. She did not preside in the trial of the rape charges against the accused nor did she convict and sentence the accused on 6 July 2012. Mr Endjala did.

[5] Therefore, Mr Endjala is the magistrate who must have provided reasons for the conviction and sentence of the accused. He did not. Without reasons for conviction and sentence from the presiding officer, the Appeal Court will be deprived of the benefit of hearing from the magistrate's side concerning the allegations the appellant has made in attacking the verdict of guilty of the offences he has been charged with and the sentence imposed on him.

[6] There are other defects in the record provided as pointed out by the respondent in the heads of argument, these are that page numbers 111, 113, 115, 119, 121 and 127 are not readable and difficult to make out the typed words. Pages 124 and 126 are numbered upside making it difficult to determine whether the pages

are part of the record or not. There are pages included in the record which pages do not form part of the record. Bearing in mind all these shortcomings in the record, I am of the view that the Appeal record before us is not only incomplete but also not properly compiled by the Clerk of the Court despite the guidelines and directives pointed out to them in the judgment of *Petrus J Coetzee v The State*¹.

[7] In view of the shortcomings in the record as pointed out above, this Court is not in a position to hear the appeal. In the result we make the following order:

- (i) That the appeal is removed from the roll.
- (ii) That the record is returned to the Clerk of the Court, Windhoek at Mungunda Street for corrections of defects and mistakes in the record of proceedings and thereafter to submit the record to the Registrar to assign a date for the hearing of the appeal after consultation with the parties.

E P Unengu
Acting

S F I Ueitele
Judge

¹ Unreported appeal judgment in Case No: 52/09, delivered on 11 March 2011.

APPEARANCES

APPELLANT: In Person

RESPONDENT: K Esterhuizen
Of the Office of the Prosecutor-General