

HIGH COURT OF
WINDHOEK



NAMIBIA MAIN DIVISION,

Case No: CC 63/2007

THE STATE

versus

JAN JULIUS

FIRST ACCUSED

GEORGE JAMBEINGE

SECOND ACCUSED

Neutral citation *S v Julius* (CC 63-2007) [2016] NAHCMD 251 (8 September 2016)

Coram: SHIVUTE, J

Heard: 17 August 2016

Delivered: 8 September 2016

Fly notes: Criminal Procedure – Sentencing – Accused 1 convicted of robbery with aggravating circumstances – Accused 1 stealing from his employer – Accused 1 in position of trust and breaching the trust – Weighing heavily against him – Attracting stiff sentence – Accused 1-2: Asking for mercy – Does not mean court not imposing proper – reasonable and justified sentence – Offences premeditated – society interest outweighs accused 1-2's interests – Deterrent sentence imposed accordingly

SENTENCE

Accused 1: 20 years' imprisonment.

Accused 2: 10 years' imprisonment.

SENTENCE

SHIVUTE J:

[1] Accused 1 was convicted of robbery with aggravating circumstances of N\$3 710 00 (three million seven hundred and ten thousand) as an accomplice whilst accused 2 was convicted of theft of N\$1 515 000 (one million five hundred and fifteen thousand). Both accused persons testified in mitigation of sentence. Their personal circumstances are as follows:

Accused 1 is not a first offender. He has two previous convictions. One of theft of a cake valued at R0 65 cents and another one of assaulting a police officer. Both previous convictions are more than ten years old and the court will not attach much weight on them. Accused 1 is 45 years old. He was employed by Fidelity Services Cash Management as a driver. His duties were to transport money to various banks and to look after it. He earned N\$1 800 per month. He had no other benefit apart from his monthly salary. He is married with seven children. The eldest one is seventeen years old and the youngest is a year and six months old. Two of the children were born from the first marriage whilst five of them are from the current marriage. They are all minor children. Accused 1 had relocated to South Africa where his current wife is residing. He is currently employed in South Africa where he earns

a salary of R12 000 (twelve thousand). His wife is employed by the South African Police Services.

[2] Accused 1 is the one who maintains his children. Five of them are school going. He owns immovable and movable properties in South Africa. He is paying for a motor vehicle that he bought on hire purchase as well as furniture and insurance. His level of education is grade 10. Both his parents are now deceased. He has three young brothers who live in the Karasburg district. He gives them financial support of a thousand dollars each per month. His wife earns R 9 000 (nine thousand) per month. Accused 1 asked the court to give him a fine coupled with a suspended sentence, because if he is given a custodial sentence his family is going to suffer. His wife will also not be able to pay for the goods bought on hire purchase and the children with his ex-wife will not be able to receive their money for maintenance. His wife is also in a family way.

[3] Accused 1 was brought up on a farm where his father was employed. He started to work at an early age because his father could not afford to send him and his siblings to school. Accused 1 said he had accepted that this court had found him guilty. He asked the court to exercise leniency on him.

[4] Accused 2 is a first offender, he is 45 years old. He is unmarried with four children. They are aged 24, 22, 21 and 1 year 8 months. Although three of his children are not minors he still maintains them. Apart from his children he maintains one pensioner with four grandchildren by buying them food and paying for their water and electricity bills. He also looks after a minor who is mentally disabled. The pensioner and the latter children mentioned above are not related to him. He is also maintaining his father who is a pensioner and his younger siblings. Accused 2 is a business man who is involved in buying and selling cars. He has four employees. He earns about N\$25 000 per month. His youngest child stays with its mother. However, he maintains the child by contributing about N\$2 000 (two thousand) to N\$3 000 (three thousand) per month. The child's mother is not employed. Accused 2's level of

education is grade 11. He left school because his parents divorced. He has four siblings. His father is a retired police officer. Accused 2 grew up in hardships because his parents divorced whilst he was very young. Like accused 1, accused 2 also said if a custodial sentence is imposed on him, his children and the people whom he supports are going to suffer. He would also lose his house which he is still paying. He accepts that the court found him guilty on the charges he was facing. He urged the court to give him a suspended sentence or a fine so that he could continue to live a positive life he has been living.

[5] Counsel for the two accused persons submitted that the court should exercise leniency on his clients by giving them a second opportunity to take their place in society. If they are sent to a correctional facility they would be exposed to all sorts of elements thereby destroying what they have built. Accused persons had accepted the court's verdict. If a suspended sentence is imposed this would hang like a sword on their shoulders and would deter them from committing further crimes. There is no evidence that accused persons benefitted from the proceeds of their crimes. Counsel further submitted that if the court imposes a fine it should be reasonable because imposing a higher fine would defeat the purpose of the accused persons being out of custody.

[6] On the other hand, counsel for the state argued that the offences of robbery with aggravating circumstances and theft are rampant in Namibia. Accused 1 was gainfully employed. Accused 2 was self-employed and he was earning a substantial amount of money. Although they had gone through hardships this should not be a justification for them to commit offences. They stole out of greed. The court should consider that the offence was premeditated and it involved a lot of planning. After the robbery, the money was quickly dispersed to several parts of the country and across the borders of Namibia. Accused 1 stole from his employer. Counsel further argued that the two accused persons did not show any remorse for what they did. Therefore, the chances for them to be rehabilitated will be very slim. A period of direct imprisonment is inescapable for both accused persons. It was again counsel's

submission that a wholly suspended sentence or a fine would be unrealistic. Counsel referred this court to several authorities on sentencing, which I have considered.

[7] The court having listened to arguments from both sides as well as personal circumstances by accused persons, in deciding what a proper sentence would be, I will consider a triad of factors namely; the offence, the crime and the interests of society. At the same time regard must also be had to the objectives of punishment which are prevention, deterrence, rehabilitation and retribution.

[8] Although accused 1 has two previous convictions I will not take those into account for the purpose of sentencing. The fact that accused 2 is a first offender weighs heavily in his favour. The accused persons requested for mercy. However, this does not mean that the court should not impose an appropriate, reasonable and justified sentence in the circumstances. The offence of robbery committed by accused 1 is very serious and rampant and this goes for the offence of theft as well. The amount stolen is also very high. Furthermore, the court has considered that the accused persons were on bail pending their trial.

[9] Accused 1 stole from his employer. He was entrusted with the transportation of the money, but instead he connived and planned with others to steal the money. A firearm which is a dangerous weapon was used and Mr Iyambo, the security guard, was subjected to violence. A firearm was pointed at him, he was kicked and further assaulted with a pepper spray. Accused 1 helped the hitchhiker to disarm Mr Iyambo and he was rendered useless. This offence was premeditated and well calculated. Immediately when the money was stolen it was given to several people. Accused 1 is convicted of robbery with aggravating circumstances of N\$3 710 000 (three million seven hundred and ten thousand) which is a substantial amount of money. Accused 1 was in a position of trust but he betrayed his employer by breaching that trust. Because of the position he held, this attracts a stiff sentence. The interest of society demands that a deterrent sentence should be imposed. It is high time for those convicted of committing crimes and would be offenders to realise that such conduct

has no place in our society and that the courts view criminal behaviour in a serious light.

[10] Although accused persons are family men who look after their children and other dependants, unfortunately through their reckless conduct, they have placed the wellbeing of the people they are looking after in jeopardy. The accused persons did not show genuine remorse as they only said they have accepted the verdict of the court instead of taking responsibility for the crimes they have committed.

[11] Accused persons have other commitments apart from the maintenance of their family members and associates namely; by paying instalments to the banks for the properties they bought on hire purchase but they had indulged themselves in criminal activities therefore risking their properties to be repossessed.

[12] After giving due consideration to all the facts in this case and principles regarding sentencing, I am of the view that the interest of society outweighs the personal circumstances of the accused persons. I do not consider a fine or a suspended sentence to be appropriate in the circumstances.

[13] In the result the accused persons are sentenced as follows:

Accused 1: 20 years' imprisonment.

Accused 2: 10 years' imprisonment.

NN Shivute
Judge

APPEARANCES:

THE STATE:

Ms A Meyer

Office of the Prosecutor-General, Windhoek

ACCUSED:

Mr JMB Neves

Instructed by Directorate of Legal Aid, Windhoek