



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

APPEAL JUDGMENT

Case no: CA 108/2015

In the matter between:

**WILLEM JOHN KOOPER**

**APPELLANT**

And

**THE  
RESPONDENT**

**STATE**

**Neutral citation:** *Kooper v State* (CA 108-2015) [2016] NAHCMD 255 (9 September 2016)

**Coram:** SIBOLEKA J and USIKU J

**Heard:** 25 July 2016

**Delivered:** 9 September 2016

**Flynote:** Appeal against sentence – The role of Court of appeal – Trial Court must exercise discretion in sentencing in accordance with judicial principles – Court of appeal only to interfere if discretions not exercised in this manner – Court of appeal generally reluctant to erode trial Court’s discretion – Such erosion could undermine administration of justice.

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## ORDER

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The appeal against sentence is dismissed.

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## APPEAL JUDGMENT

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USIKU J, (SIBOLEKA J CONCURRING)

[1] The appellant was charged on a single charge of Murder and pleaded guilty on the 17 July 2014, in the Keetmanshoop regional Court, he was sentenced to twenty years imprisonment, of which five years are suspended.

[2] He now appeals against the sentence.

[3] At the inception of the appeal Mr Kumalo who appeared on behalf of the respondent raised a point in *Limine*, namely that a convicted person who wishes to appeal against sentence should file a notice of appeal within fourteen (14) days after the date of such conviction, sentence or order with the clerk of the court in which he shall set out clearly and specifically the grounds, whether of facts or law or both fact or law, on which the appeal is based, Rule 67(1) of the magistrates court rules this was stated in the case of *State v Kashire*<sup>1</sup>. Mr Kumalo further alludes that there were no reasons advanced for the late filling and request for the application to be dismissed.

[4] The rules provide in simple and unambiguous language that the appellant must lodge his notice of appeal in writing in which he must set out “clearly and

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<sup>1</sup> State v Kashire 1978 (4) SA 166 at 167 H-I

specifically” the grounds on which the appeal is based. The appellant's grounds of appeal are as follows:

1. That his personal circumstances such as the fact that he is married, has children and is the bread winner of his family were not considered and afforded due weight in the sentencing process;
2. That the sentence of 20 years imprisonment is shockingly inappropriate in respect of the matter at hand.

[5] The appeal court is entitled to interfere with a sentence when:

- a) The trial court misdirected itself on the facts or on the law.
- b) An irregularity which was material occurred during the sentencing proceeding.
- c) The trial court failed to take into account material facts or overemphasized the importance of other facts.
- d) The sentence imposed is startlingly inappropriate, induces a sense of shock and there is a striking disparity between the sentence imposed by the trial court and that which would have been imposed by a court of appeal<sup>2</sup>.

[6] The purported grounds of appeal according to the appellant were not afforded due weight in the sentencing process, which necessitated this appeal.

In *Gariseb v The State*<sup>3</sup> the court held:

“...the Court had regard to his personal circumstances, upbringing and education, but found that the aggravating factors far outweigh the few mitigating factors. It is permissible to accord different weights to the different relevant factors when considering what sentence to impose, even to the extent that mitigating factors have no actual effect on the sentence, especially if the crime is really serious.”

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<sup>2</sup> S v Tjiho 1991 NR 361 (HC) at 366 A-B.

<sup>3</sup>Gariseb v The State CC 5/2003 Delivered on 22 June 2009

[7] Furthermore in the Namibian Supreme Court in the case of *S v Paulus Alexander*<sup>4</sup>, it was held that:

“In cases like the present the interests of society is a factor which plays a material role and which requires serious consideration. Our country at present suffers an unprecedented, uncontrolled and unacceptable wave of violence, murder, homicide, robbery and rape. A blatant and flagrant want of respect for the life and property of fellow human beings has become prevalent. The vocabulary of our courts to describe the barbaric and repulsive conduct of such unscrupulous criminals is being exhausted. The community craves the assistance of the courts: its members threaten, inter alia, to take the law into their own hands. The courts impose severe sentences, but the momentum of violence continues unabated. A court must be thoroughly aware of its responsibility to the community, and by acting steadfastly, impartially and fearlessly, announce to the world in unambiguous terms its utter repugnance and contempt of such conduct.”

[8] It is trite that sentence essentially falls within the discretions of the trial court, and that the appeal court should only interfere if there are serious misdirection by the trial court<sup>5</sup>. In the present case there were no misdirection by the trial court, and the sentence imposed does not induce a sense of shock if regard is had to sentences that have been imposed for similar cases.

[9] In the result, the appeal against sentence is dismissed.

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DN USIKU  
Judge

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<sup>4</sup>*S v Paulus Alexander* (Case No SA 5/1995 unreported judgment delivered 13/2/03)

<sup>5</sup>*S V Noble* 2002 NR 67 (HC).

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A SIBOLEKA  
Judge

APPEARANCES

APPELLANT: Mr Willem Jan Kooper  
Windhoek Central Prison: Inmate

RESPONDENT: Mr Kumalo  
Of the Office of the Prosecutor-General, Windhoek