"ANNEXURE 11"

IN THE HIGH COURT OF NAMIBIA (TO THE SUPREME COURT OF NAMIBIA)

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| Case Title:  JOHANNES HANEB 1sr APPELLANT  RICHARD USES 2ND APPELLANT  versus THE STATE | Case No.: HC-MD-CRI-APP-CAL-2017/00009  **Neutral citation:** *Haneb v S* (HC-MD- CRI-APP-CAL-2017/00009) (2018] NAHCMD  125 (11 May 2018) |
|  | Division of Court:  High Court Main Division |
| Tried before: SHIVUTE J et SIBOLEKA J | **Date of Hearing: 11 May 2018**  **Date of Ruling: 11 May 2018** |
| **Result on merits (attach order):** | |
| **THE ORDER:**   1. The application for condonation for the late filing of the notice of appeal is granted in respect of both appellants. 2. The appeal against sentence in respect of each appellant succeeds. 3. The sentence of 20 years imposed by the Regional Court is set aside and this court is at liberty to sentence each appellant afresh. 4. Each appellant is sentenced to 8 years imprisonment back dated to 12 March 2010. 5. Each appellant had already served 8 years and each should be released forthwith. | |
| **REASONS FOR DECISION (TO BE COMPLETED BY THE JUDGE):** | |
| 1. Application for condonation is granted in respect of each appellant. Each appellant had prospects of success on prosecuting the appeal against sentence. 2. Each appellant was sentenced to 20 years imprisonment being the mandatory   sentence at the time of sentencing. However, the mandatory sentence was ruled unconstitutional in Daniel v Attorney General and Others 2011 (1) NR 330 (HC) AT 355-356. | |

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| (c) Although the stock that was stolen is worth N$ 1000, the appellants had already served 8 years of their sentence and this is the reason this court sentenced them afresh to 8 years, back dated to 12 March 2010. In any normal circumstancesthis court would not have sentenced any accused person to 8 years for stock theft worth N$1000. | |
| **Judge's signature:** | **Note to the parties:** |
| N.N. Shivute: *U/Jl1L*  I Concur: *'-I*  A.M.Siboleka: *(?; ./ (\_ll5* |  |
| / **Counsel:** | |
| Mr Kamwi (For the first applellant)  Mr Brockerhoff (For the second appellan)t | Ms Esterhuizen(For the respondent) |

HC-MD-CRI-APP-CAL-2017/00009

IN THE HIGH COURT OF **NAMIBIA, MAIN** DIVISION,

HELD AT WINDHOEK

ON FRIDAY, THE 11t h DAY OF MAY 2018 BEFORE THE HONOURABLE JUSTICE SHIVUTE et THE HONOURABLE JUSTICE SIBOLEKA

In the matter between:

JOHANNES HANES

RICHARD USEB

and

THE STATE

1s t APPELLANT

2nd APPELLANT

RESPONDENT

COURT ORDER

Having heard Mr. Kamwi for the first appellant and Mr. Brock erhoff for the second appellant, and Ms. Ester hui zen, on behalf of the respondent and having read the Application for HC-MD-CRI-APP-CAL-2017/00009and other documents filed of record:

IT IS HEREBY ORDERED THAT:

1. The applicatio n for condonation for the late filing of the notice of appeal is granted in respect of both appellants.
2. The appeal against sentence in respect of each appellant succ eeds.
3. The sentence of 20 years imposed by the Regional Court is set aside and this court is at liberty to sentence each appellant afresh.
4. Each appellant is sentenced to 8 years imprisonment back dated to 12 March 2010.
5. Each appellant had already served 8 years and each should be released forthwith.

BY ORDER OF THE COURT



Charlet Mokomele

**Registrar of the High Court**

**Main Division Windhoek**

**TO:**

**AND TO:**

**AND TO:**

TREVOR BROCKERHOFF

On behalf of 2n d Appellant

Mbudje & Brockerhoff Legal Practitioners No. 9 Salk Street. Windhoek West Windhoek

Khomas Namibia

KALUNDU KAMWI

On behalf of 1st Appellant

Sibeya & Partners Legal Practitioners M2 Floor

Channel Life Building Post Street Mall Windhoek

Namibia Namibia

**KARIN** ESTERHU IZEN

On behalf of Respondent

Government - Office of the Prosecutor-General High Court Building Luderitz Street

Windhoek Namibia Namibia