

"ANNEXURE 11"

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

Case Title: JOHANNES HANEB RICHARD USES versus THE STATE	1sr APPELLANT 2ND APPELLANT	Case No.: HC-MD-CRI-APP-CAL-2017/00009 Neutral citation: <i>Haneb v S</i> (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: <ol style="list-style-type: none">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):		
<p>(a) Application for condonation is granted in respect of each appellant. Each appellant had prospects of success on prosecuting the appeal against sentence.</p> <p>(b) 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 <i>Daniel v Attorney General and Others</i> 2011 (1) NR 330 (HC) AT 355-356.</p>		

(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 circumstances this 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: <i>U/J11L</i> I Concur: <i>'-I</i> A.M.Siboleka: <i>(?; ./ (_115</i>	
Counsel:	
Mr Kamwi (For the first appellants) Mr Brockerhoff (For the second appellants)	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 11th DAY OF MAY
2018 BEFORE THE HONOURABLE JUSTICE
SHIVUTE et THE HONOURABLE JUSTICE
SIBOLEKA

In the matter between:

JOHANNES HANES

1st APPELLANT

RICHARD USEB

2nd APPELLANT

and

THE STATE

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-2017/00009 and other documents filed of record:

IT IS HEREBY ORDERED THAT:

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.

BY ORDER OF THE COURT

CMokomele

Charlet Mokomele

Registrar of the High Court

Main Division

Windhoek

TO:

TREVOR BROCKERHOFF

On behalf of 2nd 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

AND

TO:

KARIN ESTERHUIZEN

On behalf of Respondent

Government - Office of the Prosecutor-General

High Court Building Luderitz Street

Windhoek

Namibia

Namibia

AND

TO: