

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

Case Title: S v Miguel	Case No.: CA 57/ 2017 Neutral citation: S v Miguel (CA 57/2017) (2018] <p style="text-align: right;">NAHCMD 16 (6 February</p>
	Division of Court: High Court Main Division
Before: SHIVUTE J	Date of Hearing: 29 January 2018 Date of Ruling: 6 February 2018
Result on merits (attach order): APPLICATION FOR LEAVE TO APPEAL BY THE STATE IN TERMS OF S 310 (1) READ WITH S 310 (2) OF THE CRIMINAL PROCEDURE ACT 51 OF 1977. ORDER: Having read the record in chambers the following order is made: <ol style="list-style-type: none">1. The application for leave to appeal in respect of count 1 is refused.2. The application for leave to appeal against sentence in respect of the second alternative to count 2 is granted.3. The application for leave to appeal against the N\$2 0200 00 to be returned to the respondents and a refusal to order the forfeiture of the money is granted.4. The application for leave to appeal against the return of the motor vehicle to the purported lawful owner is granted. REASONS FOR DECISION TO BE COMPLETED BY THE JUDGE: In terms of PD 61 of the practice directions which came in effect on 1 January 2017, the following are reasons for the ruling. <ol style="list-style-type: none">a) The applicant has no prospects of success in respect of the first count. The charge is too vague and it has not been cured by evidence. Another Court may not come to a different view.b) The applicant has prospects of success in respect of the second alternative to count 2. The sentence imposed is inappropriate, too lenient and it induces a sense of shock. Another Court may arrive at a different conclusion.	

- c) The applicant has prospects of success on appeal against the money N\$2 0200 00 to be returned to the respondents and against the order of the magistrates' refusal to forfeit the money to the State. The money in issue is proceeds of unlawful activities and another Court may have a different view.
- d) The applicant has prospects of success on appeal, although first respondent's wife made a declaration that the motor vehicle belongs to her, there is no proof of ownership and she did not adduce evidence that she was not aware that the motor vehicle was used for unlawful activities. For these reasons I am of the view that another Court may arrive at a different conclusion.

Judge's signature:	Note to the parties:
N.N. Shivute:	The reason(s) hereby provided should be lodged other with any Petition made to the Chief Justice of the Supreme Court.

CASE NO.: CA 57/2017

IN THE HIGH COURT OF NAMIBIA

WINDHOEK, 6 FEBRUARY 2018

BEFORE THE HONOURABLE MRS JUSTICE SHIVUTE

In the matter between:

THE STATE

APPLICANT

versus

FELICIANOABILIO JANO MIGUEL
FRANCISCO SODDINGO
JOAQUIM ANTONIO

FIRST RESPONDENT
SECOND RESPONDENT
THIRD RESPONDENT

Having read **Mr. Lisulo**, counsel for the appellant and **Mr. Namandje**, counsel for the respondent heads of argument in Chambers.

IT IS ORDERED

1. The application for leave to appeal in respect of count 1 is refused.
2. The application for leave to appeal against sentence in respect of the second alternative to count 2 is granted.
3. The application for leave to appeal against the N\$2 0200 00 to be returned to the respondents and a refusal to order the forfeiture of the money is granted.
4. . The application for leave to appeal against the return of the motor vehicle to the purported lawful owner is granted.

BY ORDER OF THE COURT

REGISTRAR

/vs

TO: Mr Lisulo (Prosecutor-General) Sisa Namandje & Co. Inc'