

**REPUBLIC OF NAMIBIA**

NOT REPORTABLE



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK**

**SENTENCE**

**CASE NO: CC 24/2012**

In the matter between:

**THE STATE**

**v**

**CHARLES VAN RENSBURG**

**ACCUSED ONE**

**MELANIE GRACE VAN NIEKERK**

**ACCUSED TWO**

**JESAJA JEREMIA VAN NIEKERK**

**ACCUSED THREE**

**Neutral citation:** *S v Van Rensburg* (CC 24/2012) [2018] NAHCMD 244 (16 August 2018)

**Coram:** SIBOLEKA J

**Heard on:** 4, 5, 6, 13, 20, 21 June 2018; 3, 4, 5, 6, 9, 12, 13, 16, 17  
July 2018; 1 August 2018

**Delivered on:** 16 August 2018

**Flynote:** Criminal law – Sentence – fraudulent cash loan schemes used to lure investors as cash cow - swindling monies from numerous unsuspecting

members of the public most of whom were pensioners – custodial sentences inevitable.

**Summary:** Accused one and three formed an unauthorized cash loan business trading as West Coast Financial Aid CC. Accused two became the Company's Principal Officer who received substantial amounts of money mostly, cash and or electronic fund transfer deposits from unsuspecting members of the public termed as investors. The victims were promised high and untenable monthly interest payments and the return of their capital amounts on request. Accused two instead deposited investors' monies into her personal account and that of her husband, accused three. The cheating stretched out for a very long time.

Held: An amount of ± N\$15 million was collected from the investors but only N\$7 million was proved.

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### VERDICT

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In the result the accused are sentenced as follows:

Count 1: Accused one: Two (2) years imprisonment wholly suspended for five (5) years on condition that the accused is not convicted of Theft, fraud or any other offence involving deceit;  
Accused two: Six (6) years imprisonment;  
Accused three: Four (4) years imprisonment;

Count 2: Accused one: N\$50 000 or three years imprisonment;  
Accused two: N\$50 000 or three years imprisonment;  
Accused three: N\$50 000 or three years imprisonment;

Count 3: Accused one: N\$20 000 or one year imprisonment;  
Accused two: N\$20 000 or one year imprisonment;  
Accused three: N\$20 000 or one year imprisonment.

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## SENTENCE

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SIBOLEKA J:

[1] On 17 April 2018, I convicted the three accused on the following counts: Counts 1 – 256: Fraud read with sections 103, 332(6), and 10 of the Criminal Procedure Act 51 of 1977; Counts 257 – 512: Contravening section 5 read with sections 1, 6, 7, 9 and 72 of the Banking Institutions Act, Act 2 of 1998 – Prohibition on conducting of banking business by unauthorized persons. Count 513: Contravening section 64(2) of the Close Corporation Act, Act 26 of 1988 as amended – Reckless or Fraudulent carrying on of business of co-operation.

[2] It is now my duty to consider an appropriate sentence for the accused. In doing that I have to take their personal circumstances, the crime, and the interests of society into consideration. Closely related to the above are the objectives of punishment such as deterrence, retribution, rehabilitation and prevention. It must be guarded that one factor does not get more emphasis than the other, but this may not be completely ruled out from happening because each case has its own merits.

[3] The personal circumstances of the accused are the following: Accused one mitigated under oath to say he was 37 years old at the time of the incident and is currently 48 years old. He is divorced; has two sons aged 11 and 13 years respectively. The children reside with their mother in Walvis Bay. He is still maintaining them. He is paying N\$8 500 for both of them per month. They are

attending a Private School in Walvis Bay. This accused went up to Grade 10 at school. He grew up at Noordoewer.

[4] Accused one's parents are deceased but were not his biological parents. They were his adoptive parents. He is employed at Khomas Transport in Okahandja since 2010 as a general manager. He earns N\$30 000 per month. Medical and housing allowance are included in his salary. He has a previous record of 1992 where he was found in possession of pornographic video for which he paid N\$150 admission of guilt. He was arrested in October 2006 on this matter. He testified that he is sorry for those who lost their money in West Coast Financial Aid CC. During the mitigation proceedings accused one testified that he was diagnosed with chronic myeloid leukemia in 2014. Dr. Zietzman testified on his behalf confirming that the disease is a slow growing cancer of the bone marrow and the blood, which is likely to worsen if the accused is incarcerated. Mr. Van Vuuren, counsel for accused one echoed the same sentiments. He also persuaded the court to consider the role played by each accused on the count of fraud.

[5] Melanie Grace Van Niekerk is accused two on this matter. She mitigated under oath saying she is currently 49 years old and is married to accused three. She has two children aged 29 and 19 years. Her elder son Jose Visagie suffers from Autism and is unable to take care of himself. The accused's daughter and a nanny are taking care of him. Her sick son has a normal brain, he can walk, take something to eat, he can sleep and cover himself with a blanket, but he cannot prepare food for himself, a situation taken care of by his sister and the nanny. However, the sickness Autism does not allow her son to mix with other people. He only prefers to be with family members. This evidence credibly militates that of Dr. Martina Perstling, a clinical psychologist who suggested in her mitigation before sentence on behalf of accused two that it was necessary that one of the care givers (parents) must always be there. It is further so, if regard is also had to the fact that accused two (the mother of the sick child) did not testify of any risk

her absence may cause to the child or has in fact caused him during the two months of her incarceration at the Police Cells after conviction that resulted in the withdrawal of bail. The evidence of the sick child's mother shows that he can cope in the presence of the nanny and his sister.

[6] At the time of the incident they were residing in Oranjemund, but they left when her husband had no work to do there, and their business was closed. They are now residing in Walvis Bay. All their bank accounts were frozen and are currently surviving on pension payments. She requested the court for a suspended sentence or to be ordered to do community service to enable her to look for work. According to this accused even if she had sold all that she had, it would not have been enough to pay back all the people they owe. This shows the substantial amounts of money the investors have lost on this matter.

[7] Jeremia Jesaja Van Niekerk is accused three on this matter, and the husband of accused two. He also mitigated under oath saying he is now 53 years old. He is not the biological father of the child suffering from Autism. Before his arrest he was employed, earning a monthly salary of N\$33 000 after deductions. He does not know what will happen to the house he is renting in Walvis Bay if he is sent to goal on this matter. He suffers from high blood pressure for the past 15 years. He requested the court to consider a suspended sentence for him so that he gets a chance to go back to his work. Accused three did not report to the police when he noticed some unaccounted for huge deposits of money in his account. Some victims took out loans to invest in West Coast Financial Aid CC with a view that they will be able to repay the money back. Counsel for accused two and three, Mr. Mostert submitted that the court should have mercy and consider imposing suspended sentences for the accused. The prosecution counsel Ms. Husselman, cited numerous authorities that relate to consistency in sentencing offenders convicted of deceit such as fraud. She persuaded the court to consider a less severe sentence for one of the parents of the child suffering from Autism.

[8] On the crimes the three accused have been convicted on, I will make the following observations. They were residents of Oranjemund at the time of the incident. Accused one and three worked on the Mine Namdeb, while accused two was a house wife married to accused three. Accused one initially formed Desert Financial Services wherein accused two helped running it for him at a salary of N\$5 000 per month. When this business was deregistered, accused one and three formed West Coast Financial Aid CC. Here again accused two was appointed as a Principal officer to run the business at a salary of N\$10 000 per month.

[9] The main purpose of this business was to receive cash/cheque deposits/electronic fund transfer deposits from members of the public, the so called investors, and to lend it out at 30% interest to those in need of it. The investors were promised a monthly interest ranging from 7, 10 to 15% respectively. To be able to secure investors all three accused embarked upon the active soliciting, selling the existence of their business to the public at large. The three accused told those they spoke to to go and tell others out there, about the business. In between accused two formed her own business Mias Micro Lending without relinquishing her Principal position with West Coast Financial Aid CC. West Coast Financial Aid CC only had a lending licence, it did not have a banking business licence allowing it to receive cash deposits from members of the public. On the other hand Mias Micro Lending did not have both banking business licence.

[10] West Coast Financial Aid CC experienced very serious cash flow problems which accused two initially thought she would resolve on her own excluding the owners of the business. She however failed and told accused one and three about it but they did nothing. Evidence showed that investors were given differently worded contracts. In total ± N\$15 million was received by West Coast Financial Aid CC, but only N\$7 million could be proved in court. The

investors were promised to receive monthly interest in addition to the return of their full amounts of capital. The capital was not paid back to the investors and so was the interest of those who elected to reinvest it back to West Coast Financial Aid CC, in order to get it later together with the capital. Most investors were frail, elderly pensioners who lost all their pension money.

[11] Evidence showed that large sums of investors' monies were deposited in the private bank accounts of accused two and three for their own use. After accused two had noticed serious irreparable cash flow problems and had dismally failed to remedy the situation, she nonetheless continued to lure most of the still unsuspecting victims out there to continue investing more money while she already knew that she will not be able to pay the amounts back.

[12] The fraudulent misrepresentation to the victims inducing them to invest in West Coast Financial Aid CC was stretched for a very long time. This resulted in some of the victims making several large sums of investments at various intervals. No investors' monies was deposited in accused one's private bank account for his own use and benefit.

[13] On the interests of society, it is important to record that this fraudulent scheme attracted a substantial number of members of the public who were attracted by a promise of untenable high monthly interests. It is the promise for the return of the capital and monthly interest payments that attracted many victims. The investors were told that the more they invested, the better would be their monthly interest. There was no authorization for the accused to receive monies from members of the public. The public was deceived and cheated out and have hence suffered severe loss. The offences are serious and the accused have to be punished for it.

[14] In consideration of sentence I have taken the following into account:

The personal circumstances of all the three accused.

Deterrence as an objective form of punishment as well as the interests of society. Also considered is the swindling of the investors monies that accused two indifferently continued to ask and receive even after she had noticed that the business had run into very serious irreparable cash flow problems. The conducting of unauthorized banking businesses, and the reckless/fraudulent carrying on of business of co-operation. The role each accused played in this fraudulent cash loan scheme.

[15] In the result the accused' are sentenced as follows:

- Count 1: Accused one: Two years imprisonment wholly suspended for five (5) years on condition that the accused is not convicted of Theft, fraud or any other offence involving deceit;  
Accused two: Six (6) years imprisonment;  
Accused three: Four (4) years imprisonment;
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Accused two: N\$50 000 or three years imprisonment;  
Accused three: N\$50 000 or three years imprisonment;
- Count 3: Accused one: N\$20 000 or one year imprisonment;  
Accused two: N\$20 000 or one year imprisonment;  
Accused three: N\$20 000 or one year imprisonment.

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A M SIBOLEKA

Judge



## APPEARANCES:

FOR THE STATE: I. Husselman  
Office of the Prosecutor-General, Windhoek

FOR ACCUSED 1: J. Van Vuuren  
Directorate of Legal Aid, Windhoek

FOR ACCUSED 2 & 3: C. Mostert  
Directorate of Legal Aid, Windhoek