

REPUBLIC OF NAMIBIA



NOT REPORTABLE

HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case No.: HC-MD-CRI-APP-CAL-2020/00025

In the matter between:

WILFRIED LANGERMAN

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation: *Langerman v The State* (HC-MD-CRI-APP-CAL-2020/00025) [2021]
NAHCMD 254 (26 May 2021)

Coram: LIEBENBERG J *et* JANUARY J

Heard: 17 May 2021

Delivered: 17 May 2021

Reasons released: 26 May 2021

Flynote: Criminal procedure – Appeal – Notice of appeal – Notice should meet the requirements of Rule 67(1) of the Magistrate Court Rules – Grounds form basis of the appeal and must be set out clearly and specifically – If these requirements are not

satisfied there is no valid notice of appeal before the court – Point *in limine* upheld – Appeal struck from the roll.

ORDER

(a) The point raised *in limine* is upheld.

(b) The appeal is struck from the roll.

JUDGMENT

LIEBENBERG J (JANUARY J concurring):

[1] On 17 May 2021 when the matter came before us for oral argument, we invited counsel to address us on the point raised *in limine* by the respondent and after hearing counsel, this court upheld the point raised and struck the matter from the roll. The court intimated that the reasons would be provided at a later stage. Herein below are the reasons.

[2] Mr *Grobler* appears for the appellant and Mr *Kanyemba* for the respondent.

[3] The point raised *in limine* relates to the appellant's notice of appeal in which only two grounds of appeal are noted. The respondent contends that, based on established case law, the purported grounds do not constitute proper grounds as they are mere conclusions drawn by the appellant in his notice, without setting out the reasons or grounds the appeal is based on, as required by the rules. Hence, it was said, as the appellant has not noted proper grounds of appeal, the notice of appeal is a nullity.

[4] This argument was countered by the appellant's counsel saying that the appellant drafted the notice in person and, in view thereof, the rules should be relaxed. When asked by the court why counsel did not consider an amendment to the notice of appeal, given the bold assertions on which the appeal is based, the response came that he only recently received the instruction to represent the appellant. This notwithstanding, counsel submitted that he expounded on the grounds raised by the appellant in the heads of argument and that these were sufficient in order for the court to hear the appeal on the merits.

NOTICE OF APPEAL

[5] The appeal lies against his conviction in the Regional Court, sitting at Swakopmund, on counts of Murder and Attempted Murder. The grounds are drawn as follows:

'AD COUNT 1

1. The Learned Magistrate erred in law and/ or on the facts by finding that Appellant's guilt is proven beyond reasonable doubt on murder, relying on the doctrine of common purpose.

AD COUNT 2

2. The Honorable Court erred in law and in fact by finding that appellant's actions towards Hermanus Byl amounted to an attempt to murder him.'

[6] When considering the point *in limine*, the court is alive to the fact that the appellant at the time of drafting the notice of appeal acted in person as a lay person, and that the court in such circumstances should approach the matter with some leniency.¹ There are however limitations to this approach as stated in *Boois v The State*² at para.4 where it was said that this proposition cannot be taken too far 'as to cover ... situations where peremptory statutory provisions has not been complied with'. The relevant statutory provision in this instance is Rule 67(1) of the Magistrates Court Rules which requires of a convicted person desiring to appeal, to lodge with the clerk of the

¹ *S v Ashimbange* 2014 (1) NR 242 (HC).

² *Boois v The State* CA 76/2014 [2015] NAHCMD 131 (8 June 2015)

court 'a notice of appeal in writing in which he shall set out clearly and specifically the grounds, whether of fact or law or both fact and law, on which the appeal is based'. The rule is a peremptory requirement as regards the grounds on which the appeal is based namely, that it must be *clear* and *specific*.

[7] At the onset it seems necessary to comment on counsel for the appellant's approach towards the notice of appeal drawn by the appellant. The shortcomings in the notice itself is so glaring that counsel must upon its perusal appreciated that it fell significantly short of satisfying the requirements of the rules. In the circumstances counsel should have advised his client to rather withdraw the appeal and start afresh, laying a proper foundation on which the appellant's case is built. That counsel realised that the notice does not contain clear and specific grounds is evident from the heads of argument where the two grounds were expounded on in order to make it clear what the appellant intended when drafting the notice. To allow counsel to pursue this approach, would allow the appellant an opportunity to slip new grounds through the backdoor without affording the presiding officer the opportunity to respond thereto and which will clearly thwart the requirements set out in the rules.

[8] While one might have sympathy with appellants who find themselves in situations not of their own making and where they have been failed by their legal representatives, the rules of court are designed to facilitate the fair and expeditious adjudication of appeal matters.³ It appears to me appropriate to reiterate the remarks made in *Molebatsi v Federated Timbers (Pty) Ltd*⁴ at 96G-H where the court said:

'The Rules of Court contain qualities of concrete particularity. They are not of an aleatoric quality. Rules of Court must be observed to facilitate strict compliance with them to ensure the efficient administration of justice for all concerned. Non-compliance with the said Rules would encourage casual, easy-going and slipshod practice, which would reduce the high standard of practice which the Courts are entitled to in administering justice. The provisions of the Rules are specific and must be complied with; justice and the practice and administration

³ *S v Kakololo* 2004 NR 7 (HC).

⁴ *Molebatsi v Federated Timbers (Pty) Ltd* 1996 (3) SA 92 (B).

thereof cannot be allowed to degenerate into disorder. Practitioners are enjoined to ensure that notices of appeal comply with the Rules.’

The fate of the present appellant’s notice is thus to be decided as it reads and not as per counsel’s heads of argument.

[9] In *S v Kakololo (supra)* it was said that ‘an appeal “constitutes the very foundation on which the case of the appellant must stand or fall (*S v Khoza 1979 (4) SA 757 (N) at 758B*)”’; that the trial magistrate must be informed in clear and specific terms which part of the judgment or sentence is appealed against; the grounds on which the appeal is brought and whether they relate to issues of law or fact, or both. Only where the grounds of appeal are clear and specific would the trial magistrate be able to give reasons on issues raised by the appellant. Furthermore, the notice must be such that the respondent (the State) is informed in detail as to the grounds of appeal and the case he has to meet so that he can prepare his argument properly. It also enables the Court of Appeal to concentrate on the relevant portions of sometimes lengthy records “and crystallises the disputes and determines the parameters within which the Court of Appeal will have to decide the case (*Compare: S v Maliwa and Others 1986 (3) SA 721 (W) at 727; S v Nel 1962 (1) SA 134 (T) at 135A; and R v Lepile 1953 (1) SA 225 (T) at 230H*)”.

[10] The grounds relied on in the notice of appeal in this instance amount to nothing more than criticism of the conclusions reached by the court *a quo* and fall significantly short of satisfying the requirements set out in the rules. It then follows that if there is no proper notice, it does not comply with the provisions of Rule 67. If there are no clear and specific grounds specified, then it is not a valid notice of appeal and as such no notice of appeal at all (*Hashe v Minister of Justice and Another*)⁵ and a nullity (*R v Zive*)⁶ without any force or effect (*S v Nel*).⁷

⁵ *Hashe v Minister of Justice and Another 1957 (1) SA 670 (C) at 675A.*

⁶ *R v Zive 1960 (3) SA 24 (T) at 26F.*

⁷ *S v Nel 1962 (1) SA 134 (T) at 134F.*

Conclusion

[11] Based on the foregoing principles and conclusions reached herein, we earlier upheld the point *in limine* and struck the matter from the roll.

JC LIEBENBERG
JUDGE

HC JANUARY
JUDGE

APPEARANCES:

For the Appellant:

Z J Grobler
Grobler & Co,
Windhoek.

For the Respondent

S Kanyemba
Office of the Prosecutor-General'
Windhoek.