

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

RULING ON APPLICATION FOR LEAVE TO APPEAL I.T.O SEC. 310(1) READ WITH  
S 310(2) OF CPA

<b>Case Title:</b> <i>The State v Ndashaala Michael Layapulwa</i>	<b>Case No:</b> HC-MD-CRI-APP-SLA-2024/00029
<b>Ruling on Application for state leave to Appeal</b>	<b>Division of Court:</b> Main Division
<b>Heard before:</b> Mrs Justice Christiaan (IN CHAMBERS)	<b>Delivered on:</b> 21 October 2024
<b>Neutral citation:</b> <i>S v Layapulwa</i> (HC-MD-CRI-APP-SLA-2024/00029) NAHCMD 618 (21 October 2024)	
<b>The order:</b> The application is accordingly struck from the roll.	
<b>Reasons for decision:</b>	
CHRISTIAAN J:  [1] This is an application for leave to appeal in terms of the provisions of s 310(1) read with section 31(2) of the Criminal Procedure Act, Act 51 of 1977 as amended.	

[2] The two accused persons were discharged in the regional court, sitting at Rundu, on three counts of fraud, alternatively theft and four counts of forgery and uttering.

[3] The matter was set down for hearing on 21 October 2024.

[4] In *S v Mujiva*<sup>1</sup>, Muller J who analysed the procedure in terms of s 310(1) held, *inter alia*, that a written notice of an application in terms of s 310(1) must be served on an accused person and that the application for leave to appeal is heard by a judge in chambers and does not require a hearing.

[5] The Prosecutor-General appealed against the sentence imposed by the magistrate. In terms of section 310(1), the accused may within a period of 10 days of the serving of the notice upon him, lodge a written submission with the registrar who in turn shall submit such notice to the judge who is to hear the application.

[6] I have perused the documents filed but I was unable to find any notice served on any one of the accused persons.

[7] In the circumstances the application is not properly before me and stands to be struck off the roll.

[8] In the result the following order is made:

The application is accordingly struck from the roll.

<b>P CHRISTIAAN JUDGE</b>	

<sup>1</sup> *S v Mujiva* 2007 (1) NR 34.

