

REPUBLIC OF NAMIBIA



**HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI
APPEAL JUDGMENT**

Case no: CA 27/2017

In the matter between:

ASSER SHITHIGONA

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation: *Shithigona v S* (CA 27-2017) [2017] NAHCNLD 111 (14 November 2017)

Coram: TOMMASI J *et* JANUARY J

Heard: 2 November 2017

Delivered: 14 November 2017

Flynote: Appeal – Condonation – No prospects of success – Notice of Appeal — Grounds do not comply with Rule 67(1) of the Magistrate’s Court rules which provides that it must be clear and specific – Court nevertheless examined if there are good grounds to deviate from the requirements laid down in Rule 67 – No misdirection by court *a quo* – Sentence not shockingly inappropriate – Condonation not granted and matter struck from the roll.

ORDER

1. The application for condonation is dismissed.
2. The appeal is struck from the roll.

JUDGMENT

TOMMASI J (JANUARY J concurring):

[1] The appellant was convicted of theft of a television and GoTV decoder with a total value of N\$1698. He was sentenced to 30 months' imprisonment. It is against the latter sentence the appellant now appeals.

[2] The appellant, acting in person, lodge his Notice of Appeal almost 9 months after he was sentenced, at the clerk of the court. The reasons advanced for the late noting of the appeal are not entirely clear but it appears he did not fully understand the explanation given by the court after sentence. The respondent opposed the application for condonation mainly on the ground that there are no reasonable prospects that he would succeed.

[3] The appellant's grounds are that the court must grant him a minimum affordable fine; that he is a high school graduate who completed grade 12 in 2014 with 24 points. He would like to further his studies at tertiary level in the academic year 2018; the learned magistrate failed to provide justice to operate in favour of liberty; his mother is not in good health and she cannot do all the chores on her own.

[4] The above are not grounds of appeal. It is merely a regurgitation of the factors he mentioned in mitigation in the court *a quo*. There is, strictly

speaking, no appeal before the court and the appeal stands to be struck from the roll (see *S v Kakololo 2004 NR 7 (HC)*).

[5] The court nevertheless considered whether there is good cause to deviate from the rule that the grounds must be clear and specific. There is no apparent misdirection on record, the court *a quo* considered all the factors in mitigation and in aggravation to arrive at the sentence. What is notable is that the appellant is not a first offender. In the circumstances it cannot be said that the sentence is shockingly inappropriate.

[6] There are no reasonable prospects that the appellant would succeed and the grounds raised do not comply with the requirements of Rule 67(1) of the Magistrate's Court rules in that it is not clear and specific. Moreover, there is no reason why this court should interfere with the sentence imposed by the court *a quo*.

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

1. The application for condonation is dismissed
2. The appeal is struck from the roll.

M A TOMMASI
JUDGE

I agree

HC JANUARY
JUDGE

APPEARANCES:

FOR THE APPELLANT:

MR SHITHIGONA
IN PERSON

FOR THE RESPONDENT :

MR MUDAMBURI
OFFICE OF THE PROSECUTOR
GENERAL - OSHAKATI