



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI

APPEAL JUDGEMENT

Case No.: CA 19/2017

In the matter between:

**KAUFIWONGALI GEREVASIO**

**APPELLANT**

and

**THE STATE**

**RESPONDENT**

**Neutral citation:** *Gerevasio v S* (CA 19/2017) [2017] NAHCNLD 97 (28 September 2017)

**Coram:** TOMMASI, J and JANUARY, J

**Heard:** 17 August 2017

**Delivered:** 28 September 2017

**Flynote:** Criminal Procedure – Appeal – Sentence – Robbery – Reduction of sentence – Fine – Inappropriate.

**Summary:** The appellant was convicted of robbery and sentenced to two years' imprisonment. While the complainant was walking at a place called Sky Bridge in Oshakati two assailants approached her. One of them grabbed her on the arm twisted the arm, beat her on the forehead with a fist and tripped her down. The appellant grabbed her cellphone, N\$2 000 from her hand and ran off. She positively identified the appellant as the person who grabbed the cellphone from her hand.

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### **ORDER**

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1. The appeal is dismissed.
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### **APPEAL JUDGEMENT**

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**JANUARY J** (Tommasi, J Concurring)

[1] The appellant was convicted in the Oshakati Magistrates court for robbery after he pleaded not guilty. He now appeals against a sentence of two years' imprisonment. He appears in person and does not advance any particular ground of appeal.

[2] The appellant only submits that his sentence should be reduced and he prays for a fine of N\$200 in order for him to resume his employment as a builder. He submits that he will never buy something in the street again; that he is a father and that he is currently unemployed.

[3] The personal circumstances of the appellant are that he is not married. He has two children. He stated in mitigation that he is employed and earns a salary of N\$1 500 contrary to what he alleges in his notice of appeal that he is unemployed. He further stated in mitigation that he cannot afford to pay a fine because he is still on holiday and has not started working yet at a construction site. The appellant is a first offender.

[4] The appellant alleged that he just bought the cellphone from a guy that he knew. He was however trying to sell the cellphone the day after the robbery. A Police Officer pretending to be a buyer approached the appellant and seized the cellphone after the complainant identified it.

[5] The Learned Magistrate considered correctly that robbery is a serious and prevalent offence. He sentenced the appellant as a first offender and considered the personal circumstances of the appellant. The complainant lost her handbag with another cellphone, her ID card, an FNB Bob card, N\$300 in cash, a watch worth N\$400, a necklace and earrings. Only the cellphone which the appellant had and her ID card were recovered. The Magistrate, correctly in my view, found that the appellant showed no remorse.

[6] It is trite law that sentencing is pre-eminently within the discretion of the trial court. This court of appeal has limited power to interfere with the sentencing discretion of a court *a quo*. A court of appeal can only interfere;

- when there was a material irregularity; or
- a material misdirection on the facts or on the law; or
- where the sentence was startlingly inappropriate;
- or induced a sense of shock; or
- was such that a striking disparity exists between the sentence imposed by the trial Court and that which the Court of appeal would have imposed had it sat in first instance in that;
- irrelevant factors were considered and when the court *a quo* failed to consider relevant factors.<sup>1</sup>

[7] I do not find any misdirection by the Learned Magistrate. He respectfully exercised his sentencing discretion judiciously.

[8] In the result:

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<sup>1</sup> *S v Kasita* 2007 (1) NR 190 (HC); *S v Shapumba* 1999 NR 342 (SC) at 344 I to 345A; *S v Jason & another* 2008 NR 359 at 363 to 364G

The appeal is dismissed.

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H C JANUARY

**JUDGE**

I Agree

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M A TOMMASI

**JUDGE**

**Appearances:**

For the Appellant:

In Person

**Of Oluno Correctional Facility**

For the Respondent:

Adv Tjiveze

**Of Office of the Prosecutor-General**