

REPUBLIC OF NAMIBIA



**HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION
HELD AT OSHAKATI**

APPEAL REASONS

Case no: HC-NLD-CRI-APP-CAL-2018/00027

In the matter between:

ANDREAS SKILLA MUYUMBA

APPELLANT

v

THE STATE

RESPONDENT

Neutral citation: *Muyumba v S* (HC-NLD-CRI-APP-CAL-2018/00027) [2018]
NAHCNLD 123 (6 November 2018)

Coram: TOMMASI J and CHEDA J

Delivered: 9 October 2018

Reasons Released: 6 November 2018

Flynote: Appeal – Sentence – Domestic violence – Emphasis placed on protecting the interest of society at the expense of the personal circumstances of the

appellant – Magistrate justified in doing so given the nature of the offence and the legitimate interest of society – Appeal dismissed.

Summary: The appellant was convicted of assault with the intent to do grievous bodily harm and sentence was 30 months' imprisonment. The court held that the magistrate was justified to over- emphasise the interest of society at the expense of the personal circumstances of the appellant, given the nature of the offence.

ORDER

The appeal is dismissed.

APPEAL REASONS

TOMMASI J (CHEDA J concurring):

[1] This is an appeal against sentence.

[2] The matter was heard on 9 October 2018 and the court ordered that the appeal be dismissed with reasons to follow. The Appellant appeared in person and Mr Mudamburi appeared on behalf of the respondent. What follows are the reasons for the order made.

[3] The appellant was convicted of assault with the intent to do grievous bodily harm. He admitted during questioning in terms of section 112(1) (b) that he stabbed his girlfriend on the ribs and on her arm with an iron bar. He was sentenced to 30 months' imprisonment.

[4] The appellant urged the court to impose a fine as opposed to direct imprisonment considering his personal circumstances and that he is a first offender.

[5] Mr Mudamburi, counsel for the respondent, submitted in his heads of argument that:

- (i) the offence which the appellant committed is prevalent and it is necessary that a clear and unequivocal message should resonate from our courts that crimes involving domestic violence would not be tolerated and that sentences should be appropriately severe; and
- (ii) the court ought not to interfere with the sentence as the learned magistrate properly applied her mind and exercised her discretion judiciously by considering the crime committed, the offender and the interests of society.

[6] It is trite that this court will not easily interfere with the sentence of the trial court unless: (a) there is an irregularity which vitiates the sentencing procedure; (b) the judicial officer failed to take into account material facts; (c) the sentence is startlingly or shockingly inappropriate. The gist of the appellant's complaint is that the learned magistrate downplayed his personal and mitigating circumstances and that the sentence is shockingly inappropriate.

[7] The magistrate in this matter took into consideration the personal circumstances of the appellant, the prevalence of the offence, the public outcry and the nature of the offence the appellant committed. She indeed placed more emphasis on the nature of the offence and the interest of society at the expense of the personal circumstances of the accused.

[8] The question is whether the learned magistrate, in doing so, misdirected herself. The fact that the accused is a first offender ought to carry considerable weight. There are, however, other factors which the court must consider such as the nature of the offence and the interest of society.

[9] The medical record was not provided as evidence and neither was this evidence elicited from the complainant when she gave her testimony during sentencing. The appellant however admitted that he struck the complainant twice with an iron bar. The weapon used and the fact that he struck her on the ribs are indicative of the appellant's intention to seriously injure the complainant.

[10] Domestic violence enjoys widespread media coverage and there is indeed a public outcry against crimes of this nature. It is not the object of sentencing to

pander to public opinion¹ but the court took into consideration that the bodily integrity of vulnerable members of society within domestic relationships is a legitimate interest of society. Our courts would fail in their duty if this interest is not protected. This court has on several cases expressed its abhorrence of the increased domestic violence. Persons in domestic relationships who resort to violence to resolve conflicts must know that the courts are united in their approach against this evil. The need for general and personal deterrence must be given serious consideration by all our courts.

[11] We are not persuaded that the learned magistrate erred when she imposed a custodial sentence in the circumstances of this case and in our view, the period thereof is not considered by this court to be shockingly inappropriate.

[12] It is for these reasons that the following order was made:

The appeal is dismissed.

M A TOMMASI
JUDGE

I agree

M CHEDA
JUDGE

¹ See *S v Nhinda* 2013 (4) NR 909 (NLD) page 914 paragraph 20.

APPEARANCES:

For the Appellant:	Mr A S Muyumba
	In person
	Oluno Correctional Facility, Ondangwa
For the State:	Mr J Mundaburi
	Office of the Prosecutor – General, Oshakati