

**REPUBLIC OF NAMIBIA**



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

**APPEAL JUDGMENT**

Case no: CA 37/2017

In the matter between:

**CHRISTIAN TIMOTEUS LUNGISA**

**APPELLANT**

**v**

**THE STATE**

**RESPONDENT**

**Neutral citation:** *Lungisa v S* (CA 37/2017) [2018] NAHCNLD 39 (19 April 2018)

**Coram:** TOMMASI J and JANUARY J

**Heard:** 13 March 2018

**Delivered:** 19 April 2018

**Flynote:** Criminal Procedure – Appeal –Sentence – Possession of cannabis – 16 grams valued N\$48-00 – Sentence of 5 years imprisonment of which 20 months suspended set aside – Sentenced to 3 years’ imprisonment of which 1 year is suspended on conditions.

**Summary:** The appellant in this matter was convicted for Possession of cannabis in contravention of section 2(b) of Act 41 of 1971 as amended. He was sentenced to 5 years imprisonment of which 20 months are suspended on conditions. The appeal is

against sentence. The sentence is set aside and the appellant is sentenced to 3 years imprisonment of which 1 year imprisonment is suspended on conditions.

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### ORDER

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1. The sentence of 5 years' imprisonment of which 20 months is suspended for 5 years' on condition accused is not convicted of dealing of possession of drugs committed during the period of suspension is set aside;
2. The appellant is sentenced to 3 years' imprisonment of which 1 (one) year is suspended for 5 years on condition that he is not convicted of contravention of section 2(a) of Act 41 of 1971 - Dealing in a dangerous dependence producing substance and/or section 2(b) of Act 41 of 1971 - Possession of a dangerous dependence producing drug committed during the period of suspension.
3. The sentence is anti-dated to 20 September 2016.

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### JUDGMENT

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JANUARY J (TOMMASI J, concurring):

[1] This appeal is against sentence. The appellant was convicted for possession of cannabis in contravention of section 2(b) read with sections 2(d), 1, 2(i) and 2(iv), 7, 8, 10, 14 and Part 1 of the schedule of Act 41 of 1971, as amended. 'In that on or about the **30<sup>th</sup>** day of **August 2016** at or near **Eenhana Police Holding Cells** in the district of **Eenhana** the said accused did wrongfully and unlawfully have in his possession or use a dangerous dependence-producing drug or plant from which such a drug can be manufactured to wit: **16 grams of cannabis valued at: N\$48-00.**'

[2] The appellant pleaded guilty and was convicted on his plea. The conviction is confirmed. The appellant admitted that he was in custody at the time and on request of an inmate he bought the cannabis. The appellant has a previous conviction for housebreaking with intent to steal and theft and one for possession of cannabis convicted of and sentenced on 12 August 2014.

[3] The matter came before me on automatic review and I confirmed the proceedings in accordance with justice when the appellant was sentenced to 5 (five) years imprisonment. At the time I considered the sentence appropriate in view of the fact that the appellant has a previous conviction for the same crime. The principles on an appeal are different than a review.

[4] In this appeal I find that there are merits on the appeal against sentence in that the sentence is harsh, shocking and inappropriate in view of the quantity and alleged value of the cannabis. Despite that, the appellant brushed the law in the past in respect of the same crime and does not seem to be rehabilitated and deterred.

[5] The appellant in this matter was represented by Mr Brockerhoff who filed heads of argument. He submitted that with emphasis on uniformity of sentences, the sentence in this case is shocking in view of sentences imposed in cases like this.

[6] I agree with the submissions and find a misdirection in relation to the sentence. The respondent submitted in his written heads of argument that the sentence was justified but conceded in her oral argument that the sentence is a bit harsh. I agree. In the circumstances the certificate of confirmation of the proceeding to be in accordance with justice is withdrawn.

[7] In the result:

1. The sentence of 5 years' imprisonment of which 20 months is suspended for 5 years' on condition accused is not convicted of dealing of possession of drugs committed during the period of suspension is set aside;
2. The appellant is sentenced to 3 years' imprisonment of which 1 (one) year is suspended for 5 years on condition that he is not convicted of contravention of section 2(a) of Act 41 of 1971 - Dealing in a dangerous dependence producing substance and/or section 2(b) of Act 41 of 1971 - Possession of a dangerous dependence producing drug committed during the period of suspension.
3. The sentence is anti-dated to 29 September 2016.

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H C January  
Judge

I agree

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M A Tommasi  
Judge

## APPEARANCES:

Appellant:

C T Lungisa

In person

Oluno Correctional Facility, Ondangwa

Respondent:

L Tjiveze

Office of the Prosecutor General, Oshakati