

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION  
HELD AT OSHAKATI

APPEAL JUDGMENT

Case no: HC-NLD-CRI-APP-CAL-2018/00015

In the matter between:

**JOSUA KANYEUMBO**

**APPELLANT**

**v**

**THE STATE**

**RESPONDENT**

**Neutral citation:** *Kanyeumbo v S* (HC-NLD-CRI-APP-CAL-2018/00015) [2018]  
NAHCNLD 83 (9 August 2018)

**Coram:** January J et Salionga AJ

**Heard:** 24 July 2018

**Delivered:** 09 August 2018

**Flynote:** Criminal Procedure – Appeal – Sentence – Robbery – Sentenced to 2 years imprisonment – Notice of appeal late – No application for condonation – No prospects of success - Matter struck from the roll.

**Summary:** The appellant was convicted and sentenced for robbery after he pleaded not guilty and a trial was held. The appellant appeals against sentence. He is sentenced to

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2 years imprisonment. He filed his notice of appeal out of time. He did not file an application for condonation and did not advance reasons for the delay. He is only praying for a fine. There are no prospects of success on appeal. The matter is accordingly struck from the roll.

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### **ORDER**

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1. I find that there are no prospects of success on appeal.
2. The appeal is struck from the roll and considered finalized.

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### **APPEAL JUDGMENT**

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JANUARY J (SALIONGA AJ Concurring):

[1] The appellant was charged with robbery. He pleaded not guilty. He was convicted and sentenced to 2 years' imprisonment. He is appealing against the sentence. The appellant is representing himself and Mr Gaweseb is representing the respondent.

[2] The appellant filed his notice of appeal about 3 months late. No reasons for the delay was provided. He did not file proper heads of argument but nevertheless this court entertained his appeal because he is a layperson. I am not condoning his conduct. Laypersons are also required to comply with the rules of court.

[3] He requests this court of appeal to substitute the sentence with a sentence of a fine. In oral argument he submitted that the magistrate misdirected himself by not imposing a fine. He further submitted that the magistrate erred by finding that the complainant was a pensioner as nowhere in the record does it reflect as such. His further submission is that the magistrate erred in not giving proper weight to his personal circumstances and that he is a first offender.

[4] Mr Gaweseb pointed out to court that the public prosecutor in his address in aggravation stated that the complainant is a pensioner. The record indeed reflects that. The record further reflects that the learned magistrate considered that the appellant is a first offender; that it is a serious offence and prevalent; that complainant is a pensioner and went through pain and suffering (she was throttled); that appellant is a youthful offender and school going. The court was mindful not to easily incarcerate youthful offenders thereby ending their schooling.

[5] This court considered the submissions and perused the record of proceedings. The court concluded that there is in fact no appeal before it and in addition there are no prospects of success. To impose a fine would trivialize the seriousness of the crime. It became the norm that custodial sentences are imposed for robbery. This court finds no misdirection by the magistrate.

[6] In the result;

1. I find that there are no prospects of success on appeal.
2. The appeal is struck from the roll and considered finalized.

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**H C January**

**Judge**

I agree

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**J**

**A**

**Salionga**

**Acting Judge**

Appearances:

For the Appellant:	Mr Kanyeumbo In Person Of Oluno Correctional Facility, Ondangwa
For the Respondent:	Mr Gaweseb Of Office of the Prosecutor-General, Oshakati