

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI

APPEAL JUDGMENT

<b>Case Title:</b> <i>Pendapala Gabriel Mutumbangela v The State</i>	<b>Case No:</b> HC-NLD-CRI-APP-CAL-2019/00062
	<b>Division of Court:</b> Northern Local Division
<b>Heard before:</b> Honourable Ms Justice Salionga <i>et</i> Honourable Mr Acting Justice Namweya	<b>Heard on:</b> 7 November 2019 <b>Delivered on:</b> 3 December 2019
<b>Neutral citation:</b> <i>Mutumbangela v S</i> (HC-NLD-CRI-APP-CAL-2019/00062)[2019] NAHCNLD 136 (3 December 2019)	
<b>IT IS ORDERED THAT:</b> <ol style="list-style-type: none"><li>1. Condonation in this matter is refused;</li><li>2. The matter is struck off the roll.</li></ol>	
<b>Reasons for the above order</b>	
SALIONGA J (NAMWEYA AJ concurring): <ol style="list-style-type: none"><li>1. The appeal is against sentence of five years imprisonment of which two years are suspended for a period of 5 years on condition appellant is not convicted of theft committed during the period of suspension.</li><li>2. The appellant argued his appeal in person whilst Mr Andreas appeared on behalf of the respondent.</li></ol>	

3. The appellant was charged with the offence of theft (cash money) general deficiency involving a value of N\$25031. He pleaded guilty and was accordingly sentenced on 7 November 2018.
4. Dissatisfied with the sentence imposed he filed a notice appeal and an application for condonation on 15 January 2019. In his application for condonation appellant states that he was late because he did not know what an appeal is and only became aware of the appeal rights at the correctional facility classes. This court finds this difficult to believe given the fact that the record shows that the appellants rights to appeal and review were explained to him after he was sentenced and he signed a form where such rights appear indicating that he understood.
5. It is trite law that the grounds set out in the appellant's notice of appeal form the basis or foundation on which the appeal must stand or fall and that strict compliance with the rules of court must be observed to ensure the efficient administration of justice for all concerned i.e. the appellant, the magistrate who presided over the matter, and the State (see *S v Kakololo* 2004 NR 7 (HC)).
6. The appellant's notice of appeal contains a mere restatement of his personal circumstances but no clear and specific grounds as required by law.
7. As stated, the consequences of a notice of appeal which does not comply with the provisions of rule 67(1) is no notice at all and a nullity without force or effect (see *Gofried Kuhanga & Another v The State* Case No CA 57/2002 delivered on 18 November 2004 (HC) unreported).
8. I agree with the submissions made by Mr Andreas, counsel for the respondent that the appellant offered no reasonable explanations for the delay and has no prospects of success on appeal. It is further found that there are no irregularities or misdirection committed by the learned magistrate.<sup>1</sup>

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<sup>1</sup> *S v Drotsky* 2005 NR 487 (HC)

9. In *S v Tjiho* 1991 NR 361 (HC) at 366 A-B it was held that the court of appeal will only interfere with the sentence of the trial court 'where (i) the trial court misdirected itself on the fact or on the law; (ii) an irregularity which was material occurred during the sentencing proceedings; (iii) the trial court failed to take into account material facts or overemphasised the importance of other facts; (iv) the sentence imposed is startlingly inappropriate, induces a sense of shock and there is a striking disparity between the sentence imposed by the trial court and that which would have been imposed by the court of appeal. I am also inclined to follow the above approach in this matter.

10. In the result, the condonation application is refused and the matter is struck off the roll.

J T SALIONGA JUDGE	M NAMWEYA ACTING JUDGE

APPEARANCES

APPELLANT:

Mr P Mutumbangela

Of Oluno Correctional Facility, Ondangwa

RESPONDENT:

Mr J Andreas

Of Office of the Prosecutor-General, Oshakati