

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION, OSHAKATI

REVIEW JUDGMENT

Case Title: <i>The State v Policap Puleni and Patricius Puleni</i>	Case No: CR 22/2019
	Division of Court: Northern Local Division
Heard before: Honourable Mr. Justice January J <i>et</i> Honourable Ms. Justice Salionga J	Delivered on: 2 August 2019
Neutral citation: <i>S v Puleni</i> (CR 22/2019) [2019] NAHCNLD 73 (2 August 2019)	
The order: <ol style="list-style-type: none">1. The convictions are confirmed.2. The sentences are set aside.3. The magistrate is directed to inform the accused that the sentences will have to be increased considering their personal circumstances, the seriousness of the offences, the prevalence thereof and they were clearly well premeditated4. The matter is remitted to the magistrate to sentence both accused afresh in accordance with the directions of this court.	
Reasons for order:	

JANUARY J (SALIONGA J concurring):

1. The two accused were each charged for fraud. They misrepresented to Eenhana NATIS office and or Mandume Ndawedapo that they are the persons with identities Patricius Puleni and Policap Puleni who were writing learners licence tests whilst they respectively wrote the test, the one for the other. Patricius Poleni wrote for Policap Puleni and Policap Puleni wrote for Patricius Poleni well knowing that they were not the persons with those identities and were misrepresenting their identities.
2. Both accused pleaded guilty, and were convicted and each sentenced to N\$1000 or 30 days imprisonment.
3. The convictions are confirmed.
4. The sentences are shockingly inadequate. Fraud in general is a serious crime. Considering the notorious fact of the high number of motor vehicle accidents on Namibian roads, the world over and that they are caused by amongst others unlicensed and incompetent driving, in my view aggravates the crimes.
5. 'Proceedings do not only fail to be 'in accordance with justice' where a sentence by a magistrate is too high, but they also fail to be in accordance with justice where they are hopelessly inadequate by reason of the relevant circumstances'.¹
6. ... 'The sentence having been incompetent in the first place, means that there was no sentence. The reviewing Court therefore has to impose a sentence afresh. Where justice requires it, even though the sentence is incompetent the matter would be returned to the magistrate's court for sentencing afresh'.²
7. ... 'while the sentence is completely inadequate in relation to the offence, it is a sentence which is permissible in law and cannot be corrected by this Court because of its hopeless inadequacy'.³

¹ *S v Arebeb* 1997 NR 1 (HC) at p 6 D-E

² *S v Arebeb* (supra) at p 8 C-D

³ *S v Arebeb* (supra) at p 9D-E

8. '...Courts have drawn a distinction between sentences which are competent and those which are incompetent and have declined to increase on review sentences which are competent but too light. However, in respect of incompetent sentences by reason of its power to 'alter' sentences, it has imposed different sentences which in effect have amounted to making sentences more onerous'.⁴

9. '...No sentence should be increased unless the accused is notified and given an opportunity to be heard. Inasmuch as there is generally no representation of the accused in review proceedings and inasmuch as the accused may have to travel many miles to attend the High Court proceedings, it would be cheaper and more convenient for both the accused and the prosecution for the matter to be returned to the magistrate's court from where the matter came. ...See S v Msindo 1980 (4) SA 263 (B); S v Mzingeli and Another A 1992 (1) SACR 615 (Tk); S v Aarons 1992 (2) SACR 469 (N) and the cases and authorities referred to in these judgments'.⁵

10. As a guideline, I have recently confirmed sentences for fraud with the same *modus operandi* to NATIS offices in Outapi. Sentences of N\$6000 or 30 months imprisonment and N\$5000 or 24 months imprisonment respectively were confirmed. Magistrates should appreciate that I do not suggest that all accused who commit this type of fraud should be sentenced to the same abovementioned sentences. Amongst others, sentences must be individualized according to circumstances of each case.

H C JANUARY JUDGE	J T SALIONGA JUDGE

⁴ S v Arebeb (supra) at p 8 A-B

⁵ S v Arebeb (supra) at p 7 K-I to p 8 I-J