

REPUBLIC OF NAMIBIA



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

APPEAL JUDGMENT

“ANNEXURE 11”

<b>Case Title:</b> <i>Mwaala Amukwa, Muunda Eliakim Amunyela &amp; Ericson Ndangi Ndayanale v The State</i>	<b>Case No.:</b> HC-NLD-CRI-APP-CAL-2019/00082
	<b>Division of Court:</b> Northern Local Division
<b>Heard before:</b> Honourable Mr Justice January J et Honourable Ms Justice Salionga J	<b>Heard on :</b> 27 July 2020  <b>Delivered on:</b> 6 August 2020
<b>Neutral citation:</b> <i>Amukwa v S</i> (HC-NLD-CRI-APP-CAL-2019/00082) [2020] NAHCNLD 102 (6 August 2020)	
<b>IT IS ORDERED THAT:</b>  1. The late filing of appellants' notice of appeal is condoned. 2. The appeal is dismissed.	
<b>Reasons for the order;</b>	

SALIONGA J (JANUARY J concurring);

[1] The three appellants were convicted in the Magistrates Court sitting at Okahao in the Outapi district on three charges of house breaking with intent to steal and theft. It is alleged that the appellants broke into three different stores belonging to different complainants. Two of the stores were broken into on the 17 June 2019 and the other store was broken into on the 16 June 2019 and various goods with a combined value of N\$ 2870 were stolen therefrom. All appellants pleaded guilty to the charges and were convicted upon their own admissions. Each appellant was sentenced to two (2) years' imprisonment on each count and the magistrate rightly ordered the sentences in respect of count one and two to run concurrently.

[2] Appellants are now appealing against the sentences. They were self-actors and Ms. Nghiyoonanye argued the appeal on behalf of the respondent.

[3] At the inception Ms. Nghiyoonanye has raised a preliminary objection to the effect that the notices of appeal received on 30 October 2019 are all not notices of appeal as no grounds of appeal were set out. Consequently, she submitted that the appeal should be struck off the roll for non-compliance with the rules of the court. She further submitted that the so-called condonation application (notice) serves no purpose because there was nothing before the court to condone. Also the affidavits filed did not mention that the appellants have any prospect of success.

[4] At the conclusion of respondent's arguments on a point in limine appellant number two indicated his intention to withdraw his appeal. Notwithstanding the above the Court reserved its ruling as three appellants lodged an appeal together and the parties were allowed to argue the matter on merits.

[5] I have carefully considered what the appellants have put forth as notices of appeal. The notices of appeal do not raise any specific complaint against the sentences imposed on

them by the learned magistrate. They merely restate the appellants' personal circumstances which the court a quo had regard to during sentencing. This restatement of personal circumstances does not constitute a ground of appeal as the respondent rightfully submitted.

[6] The affidavits filed are silent on the prospects of success. The appellants merely requested this honorable Court to reduce their sentences without advancing any grounds of appeal nor prospects of success.

[7] Rule 67 (1) of the Magistrate Court Rules provides that 'a convicted person desiring to appeal under section 103 (1) of the Act shall within 14 days after the date of conviction, sentence or order in question, lodge with the clerk of the court a notice of appeal in writing in which he shall set out clearly and specifically the grounds whether of fact or law or both fact or law on which the appeal is based'. Rule 67(1) of the *Rules of the Magistrates Court* is a peremptory requirement.<sup>1</sup> The purpose of a specific and clear ground of appeal is to 'apprise all interested parties as fully as possible of what is in issue and to bind the parties to those issues.'<sup>2</sup> Therefore the requirements as set out in Rule 67(1) of the Magistrates Court Rules have not been met.

[8] From a reading of the trial court's judgement on sentences it is evident that a balance was properly struck between the interests of the appellant, the seriousness of the crime and the circumstances under which they were committed; whilst bearing in mind the interests of society. I found no misdirection or irregularity committed in this matter

[9] In the result:

1. The late filing of appellants' notice of appeal is condoned.
2. The appeal is dismissed.

<sup>1</sup> *Boois v State*(CA 76/2014) [2015] NAHCDM 131 (08 June 2015) at para 4

<sup>2</sup> *S v Grey van Pittius & another* 1990 NR 35 at 36 H or *Boois v State* (CA 76/2014) [2015] NAHCDM 131 (08 June 2015) at para 5.

<b>Judge(s) signature</b>	<b>Comments:</b>
Salionga J:	None
January J:	None
<b>Counsel:</b>	
<b>Appellant</b>	<b>Respondent</b>
Mr M Amukwa Oluno Correctional Facility, Ondangwa  Mr M E Amunyela Oluno Correctional Facility, Ondangwa  Mr E Nd Ndayanale Oluno Correctional Facility, Ondangwa	Ms M Nghiyoonyanye Office of the Prosecutor General, Oshakati