

REPUBLIC OF NAMIBIA



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

APPEAL JUDGMENT

<b>Case Title:</b> <i>Mwatale Natangwe v The State</i>	<b>Case No.:</b> HC-NLD-CRI-APP-CAL-2019/00064
	<b>Division of Court:</b> Northern Local Division
<b>Heard before:</b> Honourable Mrs. Justice Salionga J et Honourable Mr. Justice Namweya AJ	<b>Delivered on:</b> 30 January 2020
<b>Neutral citation:</b> <i>Natangwe v S</i> (HC-NLD-CRI-APP-CAL-2019/00064) [2020] NAHCNLD 15 (30 January 2020)	
<b>The order:</b> 1. The appeal is dismissed.	
<b>Reasons for the order:</b> SALIONGA J (NAMWEYA AJ concurring):  [1] The appeal is against sentence of three years imprisonment on a charge of theft.	

[2] The appellant argued his appeal in person whilst Mr Andreas appeared on behalf of the respondent.

[3] The appellant was charged with the offence of theft of goods involving a value of N\$10650. He pleaded guilty and was accordingly sentenced on 22 June 2018. Dissatisfied with the sentence imposed he filed a notice appeal on 29 June 2018.

[4] In his notice of appeal appellant states that he is a father of three children and has one granddaughter which he takes care of, he appeals to this court to reduce the sentence of three years imprisonment or to impose a fine of at least N\$500 which he is able to afford.

[5] This court on numerous occasions emphasized that the noting of an appeal constitutes the very foundation on which the appeal must stand or fall (see *S v Khoza* 1979 (4) SA 757 (N) at 758 B): 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). In *casu* the grounds listed in the notice of appeal are not clear and specific as required by law. Appellant merely restate his personal circumstances.

[6] Punishment falls within the discretion of the trial court. As long as that discretion is judicially, properly or reasonably exercised, an appeal court ought not to interfere with the sentence imposed. In this particular case appellant stole goods with a substantial value of N\$10650. The offence was committed against a person that was doing business in order to make a living. The repercussions these types of offences have on the economy and the livelihood of the victims and their families cannot be ignored. It is therefore the duty of the courts to protect the victims of these types of crimes.

[7] In *S v Tjiho* 1991 NR (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 overemphasized 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.

[8] In the result, the appeal is dismissed.

J T SALIONGA JUDGE	M NAMWEYA ACTING JUDGE

## APPEARANCES

APPELLANT: Mr M Natangwe (In person)  
Oluno Correctional Facility, Ondangwa

RESPONDENT: Mr J Andreas  
Of Office of the Prosecutor-General, Oshakati