**REPUBLIC OF NAMIBIA**

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**HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION, OSHAKATI**

**APPEAL JUDGMENT**

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| **Case Title:***The State v Nangolo Trofimus* | **Case No:** HC-NLD-CRI-APP-CAL-2019/00096 |
| **Division of Court:** Northern Local Division |
| **Heard before:** Honourable Mr. Justice January J *et*Honourable Ms. Justice Salionga J | **Heard on:** 11 June 2020**Delivered on:** 25 June 2020 |
| **Neutral citation:** *S v Trofimus* (HC-NLD-CRI-APP-CAL-2019/00096) [2020] NAHCNLD 75 (25 June 2020) |
| **The order:**1. Condonation is granted.
2. The conviction of contravening section 16(1), read with sections 1, 16(1)(a),6(2) and 33 of the Tobacco Products Control Act, Act 1 of 2010 is confirmed;
3. The sentence of 18 months imprisonment is set aside;
4. The appellant is sentenced to 7 months imprisonment;
5. The sentence is antedated to 05 November 2019;
6. The officer in charge at Oluno Correctional Facility is directed to immediately effect the release of the appellant.
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| **Reasons for the order** |
| JANUARY J (SALIONGA J concurring):[1] The appellant was charged with contravening section 16(1) read with sections 1, 16(1)(a), 6(2) and 33 of Act 1 of 2010-Dealing in illicit tobacco products to the value of N$2000.[2] He was represented by Ms Shailemo, pleaded guilty to the charge and was convicted.[3] He was sentenced to 18 months imprisonment without the option of a fine.[4] The appellant filed his notice appeal late with an application of condonation and supporting affidavit. The respondent, represented by Ms Nghiyoonanye did not oppose the application. She conceded that the appellant has prospects of success on appeal as the sentence is startlingly inappropriate and induces a sense of shock. Ms Nghiyoonanye further conceded that a fine would have been appropriate considering the personal circumstances of the appellant.[5] The appellant is a first offender at the age of 37 years old. He pleaded guilty as a sign of remorse. He lives with an 80 year old mother and has 7 children. Four of the children attend school and the appellant is responsible for their maintenance. He is unemployed but generates income from odd jobs.[6] I agree with the concession that the sentence is inappropriate and that a fine would have been appropriate. In my considered view, the magistrate overemphasized the seriousness of the offence. The appellant however already served slightly more than 7 months imprisonment. Imposing a fine at this stage would, in my view be prejudicial to the appellant. Hence the order above. |
| **Judge(s) signature** | **Comments:**  |
| January J | None |
| Salionga J | None |
|  **Counsel:** |
| **For Appellant**Ms ShailemoOf Shailemo & Associates | **For Respondent** Ms NghiyoonanyeOf Office of the Prosecutor-General |