

REPUBLIC OF NAMIBIA



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

<b>Case Title:</b> <i>Angala Eliakim Kamosho v The State</i>	<b>Case no:</b> HC-NLD-CRI-APP-CAL-2019/00085 Appeal Case No.: Outapi 94/2019
	<b>Division of Court:</b> Northern Local Division
<b>Heard before:</b> Honourable Mr. Justice January J <i>et</i> Honourable Ms. Justice Salionga J	<b>Heard on:</b> 2 July 2020 <b>Delivered on:</b> 23 July 2020
<b>Neutral citation:</b> <i>Kamosho v S</i> (HC-NLD-CRI-APP-CAL-2019/00085) [2020] NAHCNLD 90 (23 July 2020)	
<b>The order:</b> <ol style="list-style-type: none"><li>1. The application for condonation is refused;</li><li>2. The matter is struck from the roll and considered finalized;</li></ol>	
<b>Reasons for the order:</b>	
JANUARY J (SALIONGA J concurring);  [1] The appellant in this matter was convicted for housebreaking with intent to steal and theft after a plea of guilty. He was sentenced to 36 months imprisonment of which 12 months are suspended for 5 years on condition that the accused is not convicted of housebreaking	

and theft committed during the period of suspension.

[2] He prosecuted the appeal by himself and is appealing against sentence only. Mr Gaweseb is representing the respondent. The appellant stated that he filed the notice of appeal late because he only received the record late. He did not state what steps he took to receive the record timeously.

[3] Mr Gaweseb raised a point *in limine* that the appellant filed his notice of appeal late and did not give a reasonable explanation for the delay. The appellant also did not mention any misdirection or where the learned magistrate erred. Thus there are no grounds of appeal.

[4] Rule 67(1) of the Magistrate's Courts Rules provides that such a notice:

'Shall set out clearly and specifically the grounds, whether of fact or law or both fact and law, on which the appeal is based'. I agree with Diemont J where he states the following in *S v Horne* 1971 (1) SA 630 (C) at 631H-632A:

'The Rule provides in simple unambiguous language that the appellant must lodge his notice in writing in which he must set out "clearly and specifically" the grounds on which the appeal is based. He must do this for good reason. The magistrate must know what the issues are which are to be challenged so that he can deal therewith in his reasons for judgment. Counsel for the State must know what the issues are so that he can prepare and present argument which will assist the Court in its deliberations, and, finally, the Court itself will wish to be appraised of the grounds so that it can know what portions of the record to concentrate on and what preparation, if any, it should make in order to guide and stimulate a good argument in Court.'

See also *S v Cohen* 1970 (2) SA 231 (N) and *S v Swanepoel* 1971 (3) SA 299 J (E).

[5] The appellant conceded in this court that the learned magistrate did not misdirect or erred in the sentence. The appellant in his purported heads of argument only prays for a reduction of the sentence. He did not raise any misdirection by the magistrate nor do I find any.

<p>[6] In the circumstances:</p> <ol style="list-style-type: none"> <li>1. The application for condonation is refused;</li> <li>2. The matter is struck from the roll and considered finalized.</li> </ol>	
<b>Judge(s) signature</b>	<b>Comments:</b>
January J	
Salionga J	
<b>Counsel:</b>	
<b>Appellant</b>	<b>Respondent</b>
Mr A E Kamosho Of Oluno Correctional Facility	Ms M Nghiyoonanye Of Office of the Prosecutor-General