

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION

HELD AT OSHAKATI

APPEAL JUDGMENT

Case Title: <i>Thomas Moses v The State</i>	Case No.: HC-NLD-CRI-APP-CAL-2019/00088
	Division of Court: Northern Local Division
Heard before: Honourable Mr Justice January J et Honourable Ms Justice Salionga J	Heard on : 2 July 2020 Delivered on: 23 July 2020
Neutral citation: <i>Moses v S</i> (HC-NLD-CRI-APP-CAL-2019/00088) [2020] NAHCNLD 92 (23 July 2020)	
IT IS ORDERED THAT: <ol style="list-style-type: none">1. The application for condonation is refused;2. The appeal against sentence is dismissed.	

Reasons:

SALIONGA J (JANUARY J concurring);

[1] The appellant was convicted in the Magistrates Court sitting at Outapi on a charge of house breaking with intent to steal and theft. He pleaded guilty, was convicted and subsequently sentenced to four (4) years' imprisonment of which one (1) year imprisonment is suspended for four (4) on condition accused is not convicted of house breaking with intent to steal and theft committed during the period of suspension.

[2] He now appeals against the sentence. The appellant was a self-actor and Mr Matota argued the appeal for the respondent.

[3] At the inception, Mr Matota raised a point *in limine* on two issues. He submitted that the appeal should be struck off for non-compliance with the rules of the court. In that the purported notice of appeal had been filed out of time and the appellant's explanation for delay is not reasonable. He further submitted that no valid grounds as is envisaged by Rule 67 (1) of the Magistrate Court Rules were raised. Notwithstanding the above the Court reserved its ruling on the condonation application and the parties proceeded to argue the matter.

[4] During the hearing of the appeal, the appellant stood to the initial documents submitted although no heads of argument was filed. Appellant in his affidavit explained the reason for the delay. He stated that he was sentenced on 5 April 2019 however he had no knowledge on how to launch an appeal. He was only informed how to appeal by his fellow inmates five months after. In the notice of appeal, appellant stated that he was working for the complainant who refused to pay him for the period he worked. He further stated that despites complainant owed him money he went ahead and laid a charge against the appellant with the police. He submitted that he is a builder, has left children who are schooling at private school and he is bread winner. He was asking the appeal court to reduce his sentence to three years to enable him to go continue assisting his family.

[5] The rules provide in simple and unambiguous language that the appellant must lodge his notice of appeal in writing in which he must set out “clearly and specifically” the grounds on which the appeal is based. He must do this to enable the magistrate to know what the issues are which are to be challenged when providing reasons for judgment, for counsel for the state to know what the issues are so that he can prepare and present argument which will assist the court in its deliberations. 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, should be made in order to guide a good argument in court.

[6] The notice of appeal is also not clear whether the appeal lies against sentence or against conviction or both sentence and conviction. I am of the view that the point in limine taken by counsel appearing on behalf of the respondent is well founded. The purported grounds of appeal on which the appellant relied are no grounds at all but conclusions made by himself or new evidence raised for the first time. It is trite that grounds of appeal should not embody arguments or conclusions reached by an appellant. It must be specific and clear. Therefore the requirements as set out in Rule 67(1) of the Magistrates court Rules have not been met.

[7] From a reading of the trial court’s judgement on sentence 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.

[8] Considering the aforesaid we found that there was no misdirection or irregularity committed in this matter.

[9] In the result:

1. The Application for condonation is refused.
2. The appeal against sentence is dismissed;

Judge(s) signature	Comments:
Salionga J:	None
January J:	None
Counsel:	
Appellant	Respondent
Mr T Moses Oluno Correctional Facility, Ondangwa	Mr L Matota Office of the Prosecutor General, Oshakati