

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION

HELD AT OSHAKATI

LEAVE TO APPEAL JUDGEMENT

<b>Case Title:</b> <i>Paulus Nghifikepunye Nghipulenga v The State</i>	<b>Case No:</b> CC 12/2020
	<b>Division of Court:</b> High Court Northern Local Division
<b>Heard before:</b> Honourable Lady Justice Salionga	<b>Heard on:</b> 22 July 2022 <b>Delivered on:</b> 02 August 2022
<b>Neutral citation:</b> <i>Nghipulenga v S</i> (CC 12/2020) [2022] NAHCNLD 76 (02 August 2022)	
<b>The order:</b> 1. The application for leave to appeal is hereby dismissed.	
<b>Reasons for the above order:</b>	
SALIONGA, J:  [1] This is an application for leave to appeal to the Supreme Court in terms of section 316 of the Criminal Procedure Act 51 of 1977 (CPA).  [2] The applicant was convicted by this court following his plea of guilty on a charge of murder read with the provisions of the Combating of Domestic Violence Act 4 of 2003. He	

was subsequently sentenced to 30 (thirty) years imprisonment on 19 January 2021. It is this sentence that he seeks leave to appeal against to the Supreme Court.

[3] The applicant's notice of leave to appeal to the Supreme Court together with an affidavit for the late filing of the notice are dated 09 November 2021. The documents seem to only have reached the Office of the Registrar of the High Court, Oshakati on 15 December 2021. Either way the applicant's notice was still filed out of the prescribed time limit.

[4] Applicant is a self-actor but was legally represented at the trial by Mr. Shiningayamwe from the Directorate of Legal Aid while Mr. Gaweseb represented the State. At present Mr. Shileka appears for the respondent.

[5] At the commencement of the hearing Mr. Shileka abandoned the points in *limine* which were raised in their heads of argument. As a result the parties addressed the court on the merits of the application.

[6] In deciding this matter the court has to consider the grounds as pointed out in the application for leave to appeal. I agree with the Respondent that grounds of appeal one to five in exception of ground six are not in compliance with the provisions of section 316 (2) of the CPA. They are merely a repetition or restatement of applicant's mitigating factors and cannot be sustained as grounds of appeal.

[7] Applicant in ground six states that his remorsefulness and contrition was not taken into consideration by the judge when the sentence was imposed. Rightfully so, in deciding whether or not to grant leave this court has to decide whether the applicant has prospects of success on that ground alone.

[8] It is entirely wrong for the applicant to state that his remorsefulness or contrition was not considered. In paragraphs 9 and 10 of the court's judgment reference was made to the personal circumstances of the applicant. At the same time the court made reference to the matter of *S v Strauss*<sup>1</sup> where it was pointed out that;

'The requirement of mercy in imposing an appropriate sentence does not mean that the courts

---

<sup>1</sup> *S v Strauss* 1990 NR 71 (HC)

must be too weak or must hesitate to impose a heavy sentence where it is justified by the circumstances.'

[9] Applicant in validating his point made reference to *S v Fillemon Ambunda*.<sup>2</sup> I must state at this point that the case referred to is distinguishable from the case at hand. In that the reason and motive for the attack in that case differs materially from the case under consideration. It was for this reason that the court remarked in its judgment on sentence that it had considered facts relevant to this matter and the personal circumstances of this specific offender/applicant. Considering the manner in which and the reason why the deceased was attacked the court concluded that the seriousness of the offence had far outweighed his personal circumstances.

[10] It is evident from the above that all of the applicant's personal circumstances were considered and evaluated at length. Therefore this court is not convinced that prospects of success have been established and the application has to fail.

[11] Consequently, the following order is made:

1. The leave to appeal is hereby dismissed.

<b>Judge</b>	<b>Note to the parties:</b>
Salionga J	Not applicable.
<b>Counsel:</b>	
<b>Applicant</b>	<b>Respondent</b>
Paulus Nghifiepunye Nghipulenga- in person Of Evaristus Shikongo Correctional Facility, Tsumeb	Mr. R. Shileka Of the Office of the Prosecutor General, Oshakati

<sup>2</sup> *S v Ambunda* (CC 04/2016) [2018] NAHCNLD 69 (24 July 2018)