



NOT REPORTABLE

CASE NO.: CA 20/2011

IN THE HIGH COURT OF NAMIBIA

In the matter between:

SIMON NOPPIE KAMBINDU

APPELLANT

and

THE STATE

RESPONDENT

CORAM: HOFF J et SIBOLEKA, J

Heard on: 28 October 2011

Delivered on: 28 October 2011 (*Ex tempore*)

JUDGMENT

HOFF J: [1] The Court will give its Ruling on this matter. The appellant was convicted in the Magistrate's Court of theft of a motor vehicle and three counts of housebreaking with intent to steal and theft. He was sentenced to an effective period of 12 (twelve) years imprisonment.

[2] The Magistrate in the Court *a quo* informed the appellant that should he wish to appeal against the conviction and sentence, he must file a notice of appeal,

and the grounds upon which he appealed against the conviction and the sentence, within a period of 14 (fourteen) days with the Clerk of the Court. The Appellant was also explained that in the event that he should file the notice of appeal out of time, he must bring a condonation application in which he must state the reasons why the notice of appeal was filed out of time.

[3] From the papers filed, it appears that the notice of his intention to appeal against his conviction as well as the sentence was only filed on the 11th August 2010. This notice was filed more than 3 (three) years out of time.

[4] Since the notice of motion was filed out of time, it was incumbent upon the accused or the appellant to bring a condonation application for the late filing of such notice. In such an application which must be on affidavit, the appellant must explain the reason or the reasons for his delay or failure to file within the prescribed period. In the affidavit the appellant must provide the Court, firstly, with an acceptable explanation as mentioned and he must also deal with the prospects of success on appeal, on the merits of the case. Where an appellant has provided no reasonable explanation for his delay in filing the notice of appeal out of time, the Court may for that reason alone strike the application or the appeal from the Roll without having considered the merits of the appeal.

[5] It appears from documents filed that an application for condonation has been filed on the 27 October 2010. It appears from this document that the appellant has not signed the affidavit before a Commissioner of Oaths. The document was therefore not properly commissioned and for this reason cannot be considered an affidavit. The second difficulty this Court has is that it appears from

this document that the reason provided for the late filing of the notice of appeal is very vague.

[6] The appellant refers to the fact that he had apparently been assured by his family that they would appoint a legal representative to act on his behalf and secondly that he had been assisted by his fellow prison inmates to draft the notice of leave to appeal. No dates are provided when the family had so promised to assist him with legal representation. This explanation is in no way reasonable or acceptable to explain his delay in filing the notice of appeal late. The document which purports to be an affidavit in support of an application for condonation also does not deal with the prospects of success on the merits of the appeal.

[7] This Court has on numerous occasions held that the Court Rules apply in respect of lay litigants, as well as those litigants who are represented by legal representatives. Since the appellant in this matter has failed to provide this Court with an acceptable explanation for late filing of his notice of appeal, the appeal is not before this Court and stands to be struck from the roll irrespective of the success of his appeal on the merits of the case.

[8] This appeal is accordingly struck from the roll.

HOFF, J

I agree

SIBOLEKA, J

ON BEHALF OF THE APPELLANT:

In Person

Instructed by:

ON BEHALF OF THE RESPONDENT:

Adv. Ndlovu

Instructed by:

Office of the Prosecutor General