



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CA 80/2013

In the matter between:

FILLEMOM FILLEMOM

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation: *Fillemon v State* (CA 80/2013) [2014] NAHCMD 58 (14 February 2014)

Coram: HOFF J and SHIVUTE J

Heard: 14 February 2014

Delivered: 14 February 2014 (Ex tempore)

Judgment available: 20 February 2014

Summary: Appeal – Application for condonation of late filing of notice of appeal – For application of condonation to succeed, there are two legs to be satisfied. Firstly, the applicant must give a satisfactory and reasonable explanation which is *bona fide* for non compliance of the Rules. Secondly he must show the court that he has reasonable prospects of success. In the present matter the appellant had failed to give a satisfactory and reasonable

explanation which is *bona fide* for the cause of his delay. He also failed to show that he has reasonable prospect of success on the merits of the appeal. Accordingly application of condonation is dismissed and the matter is struck from the roll.

ORDER

- (a) The application for condonation is dismissed.
 - (b) The matter is struck from the roll.
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JUDGMENT

SHIVUTE J (HOFF J concurring):

[1] First of all we would like to thank Mr Van Vuuren for acting as *amicus curiae*. The Applicant was charged in the Regional Court and he lodged an Application for condonation for the late filing, because he wants to appeal against his conviction as well as his sentence. He is 8 months late and in his explanation he said that he could not file his appeal on time because he had difficulties to obtain documents from different branches of the State and that he did not know where to file his appeal.

[2] It is evident from the record that the appellant is not honest. The reasons he explained being the cause of his delay have been contradicted by the record, because according to the record he was informed by the Magistrate that he should lodge his appeal within 14 days with the Clerk of Court, and the applicant replied that he understood. He never even inquired from the learned Magistrate as to in which Court he should lodge his appeal.

[3] Therefore, the explanation he gave is not *bona fide*. For the application for condonation to succeed there are two legs. First of all applicant should give a reasonable explanation which is satisfactory and *bona fide*, and secondly he should

also indicate that he has reasonable prospects of success, but the appellant had failed to do so.

[4] Furthermore, Rules of Court are there and they are binding on both lawyers as well as lay litigants. Therefore, they should be respected and they should be complied with by either a lay litigant or a lawyer. As I have indicated that the appellant only dealt with one leg and that is the explanation why he said he could not lodge his appeal on time which we found not to be reasonable, satisfactory and *bona fide* in the circumstances. We have perused the record and found that on the prospect of success his chances are very slim if non-existent at all. In view of the fact that the applicant has failed to give a proper explanation and he has also failed to indicate that he has reasonable prospects of success, this Court cannot exercise its discretion in granting the condonation for the late filing of the notice of appeal.

[4] In the result the following orders are made:

(a) The application for condonation is dismissed.

(b) The matter is struck from the roll.

N N SHIVUTE
Judge

E P B HOFF
Judge

APPEARANCES

APPELLANT:

C J van Vuuren
Krúger, Van Vuuren & Co., Windhoek,
Amicus curiae

RESPONDENT:

I O Husselmann
Office of the Prosecutor-General, Windhoek