



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

REASONS

Case no: CA 86/2016

In the matter between:

MOCKY TJIRIANGE

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation: *Tjiriange v State* (CA 86/2016) [2016] NAHCMD 390 (17 January 2017)

Coram: NDAUENDAPO J *et* LIEBENBERG J

Heard: 11 November 2016

Delivered: 17 January 2017

Flynote: Criminal procedure – Notice of appeal –Appeal Sentence-Such notice should set out clearly and specifically grounds on which appeal is brought –there is no valid notice of appeal before the court for the court to consider-Appeal struck from the roll.

Summary: The appellant was convicted of assault with intent to do grievous bodily harm and subsequently sentenced to two years imprisonment on 30 June 2016 in the district Magistrates court, Grootfontein. He filed a notice of appeal on 11 July 2016, this was done within 14 days from the date of sentence and there is thus no issue in this regard. The respondent raised a point *in limine* that there were no clear and specific grounds set out in the notice of appeal as required by rule 67(1) of the Magistrates court Rules.

Held, that there were no grounds of appeal and that the appeal is struck from the roll.

ORDER

The appeal is struck from the roll.

REASONS

NDAUENDAPO, J (LIEBENBERG, J concurring):

[1] On 11 November 2016 this court dismissed this appeal and intimated that the reasons will be provided at a later stage. Herein below are the reasons.

[2] The appellant was convicted of assault with intent to do grievous bodily harm and subsequently sentenced to two years imprisonment on 30 June 2016 in the district Magistrates court, Grootfontein. He filed a notice of appeal on 11 July 2016, this was done within 14 days from the date of sentencing and there is thus no issue in this regard. The appellant appeals against the sentence. He maintains that the two years' imprisonment must be set aside and replaced with a fine. The respondent raised a point *in limine* that there were no clear and specific grounds of appeal set out in the notice of appeal as

required by rule 67(1) of the *Magistrates Court Rules*. This point *in limine* will be dealt with at the threshold.

[3] The appellant is acting in person while Ms. Losper acts on behalf of the respondent.

[4] Ms. Losper submitted that an improper ground of appeal is no ground of appeal and thus a nullity. She further submitted that, the appellant's notice of appeal did not clearly and specifically set out the grounds of appeal, but instead merely restated his personal circumstances.

[5] The court is alive to the fact that the appellant is acting in person and that the notice of appeal filed by him should thus be construed generously in the light most favorable to the appellant.¹ However, the court cannot take this proposition 'too far, as to cover... situations where a peremptory statutory provision has not been complied with'.² Rule 67(1) of the Magistrates Court Rules provides that:

'(1) A convicted person desiring to appeal under section 103 (1) of the Act, shall within 14 days after the date of conviction, sentence or order in question, lodge with the clerk of the court a notice of appeal in writing in which he shall set out clearly and specifically the grounds, whether of fact or law or both fact and law, on which the appeal is based [my emphasis]: Provided that if such appeal is noted by a legal practitioner on behalf of a convicted person he shall simultaneously with the lodging of the notice of appeal lodge a power of attorney authorizing him to note an appeal and to act on behalf of the convicted person. A convicted person who, after a judge of the court of appeal has refused to certify that there are reasonable grounds for appeal, still desires to prosecute an appeal which he has noted shall, within 14 days after being notified of such refusal, in writing indicate or cause to be indicated to the clerk of the court whether he intends prosecuting the appeal other than in person and unless he so indicates and takes the necessary steps to prosecute the appeal within the said period, the noted appeal shall be deemed to have lapsed.'

¹ *Boois v State* (CA 76/2014) [2015] NAHCMD 131 (8 June 2015) at para. 2.

² *Boois v State* (CA 76/2014) [2015] NAHCMD 131 (8 June 2015) at para. 4.

[6] Rule 67(1) of the *Rules of the Magistrates Court* is a peremptory requirement.³ The purpose of a ground of appeal is to 'apprise all interested parties as fully as possible of what is in issue and to bind the parties to those issues.'⁴ The notice of appeal in this case is merely a restatement of appellant's personal circumstances which the court a quo had regard to during sentencing. This restatement of personal circumstances does not constitute a ground of appeal as the respondent rightfully submitted.

[7] Although this court on 11 November 2016 dismissed the appeal, that was incorrect as there were no grounds of appeal. There is therefore no valid notice of appeal before the court for the court to determine.⁵

[8] The respondent's point *in limine* is thus upheld and the appeal is struck from the roll.

GN NDAUENDAPO

Judge

JC LIEBENBERG

Judge

³ *Boois v State* (CA 76/2014) [2015] NAHCMD 131 (8 June 2015) at para. 4.

⁴ *S v Gey van Pittius & Another* 1990 NR 35 at 36H. See also, *Boois v State* (CA 76/2014) [2015] NAHCMD 131 (8 June 2015) at para. 5.

⁵ *Mbarandongo v The State* Case No. CA 127/2009 as cited in *Boois v State* (CA 76/2014) [2015] NAHCMD 131 (8 June 2015) at para. 7. See also *Idan v State* (CA 34/2014) [2014] NAHCMD 217 (14 July 2014) at para. 6.

APPEARANCES:

APPELLANT

In person

RESPONDENT:

G LOSPER

Office of the Prosecutor-General, Windhoek