

"ANNEXURE 11"

IN THE HIGH COURT OF NAMIBIA  
(TO THE SUPREME COURT OF NAMIBIA)

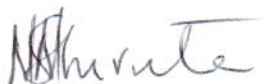
<b>Case Title:</b> JOHANNES HANEB RICHARD USEB  versus THE STATE		<b>Case No.:</b> HC-MD-CRI-APP-CAL-2017/00009 <b>Neutral citation:</b> <i>Haneb v S</i> (HC-MD-CRI-APP-CAL-2017/00009) [2018] NAHCMD 125 (11 May 2018)
		<b>Division of Court:</b> High Court Main Division
<b>Tried before:</b> SHIVUTE J et SIBOLEKA J		<b>Date of Hearing:</b> 11 May 2018 <b>Date of Ruling:</b> 11 May 2018
<b>Result on merits (attach order):</b>		
<b>THE ORDER:</b> <ol style="list-style-type: none"><li>1. The application for condonation for the late filing of the notice of appeal is granted in respect of both appellants.</li><li>2. The appeal against sentence in respect of each appellant succeeds.</li><li>3. The sentence of 20 years imposed by the Regional Court is set aside and this court is at liberty to sentence each appellant afresh.</li><li>4. Each appellant is sentenced to 8 years imprisonment back dated to 12 March 2010.</li><li>5. Each appellant had already served 8 years and each should be released forthwith.</li></ol>		
<b>REASONS FOR DECISION (TO BE COMPLETED BY THE JUDGE):</b>		
<p>(a) Application for condonation is granted in respect of each appellant. Each appellant had prospects of success on prosecuting the appeal against sentence.</p> <p>(b) Each appellant was sentenced to 20 years imprisonment being the mandatory sentence at the time of sentencing. However, the mandatory sentence was ruled unconstitutional in <i>Daniel v Attorney General and Others</i> 2011 (1) NR 330 (HC) AT 355-356.</p>		

(c) Although the stock that was stolen is worth N\$ 1000, the appellants had already served 8 years of their sentence and this is the reason this court sentenced them afresh to 8 years, back dated to 12 March 2010. In any normal circumstances this court would not have sentenced any accused person to 8 years for stock theft worth N\$1000.

**Judge's signature:**

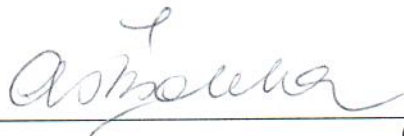
**Note to the parties:**

N.N. Shivute:



I Concur:

A.M.Siboleka:



**Counsel:**

Mr Kamwi (For the first applellant)

Mr Brockerhoff (For the second appellant)

Ms Esterhuizen (For the respondent)



HC-MD-CRI-APP-CAL-2017/00009

IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION,  
HELD AT WINDHOEK

ON FRIDAY, THE 11<sup>th</sup> DAY OF MAY 2018  
BEFORE THE HONOURABLE JUSTICE SHIVUTE  
et THE HONOURABLE JUSTICE SIBOLEKA

In the matter between:

**JOHANNES HANEB**

1<sup>st</sup> APPELLANT

**RICHARD USEB**

2<sup>nd</sup> APPELLANT

and

**THE STATE**

RESPONDENT

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**COURT ORDER**

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Having heard **Mr. Kamwi** for the first appellant and **Mr. Brockerhoff** for the second appellant, and **Ms. Esterhuizen**, on behalf of the respondent and having read the Application for HC-MD-CRI-APP-CAL-2017/00009 and other documents filed of record:

**IT IS HEREBY ORDERED THAT:**

1. The application for condonation for the late filing of the notice of appeal is granted in respect of both appellants.
2. The appeal against sentence in respect of each appellant succeeds.
3. The sentence of 20 years imposed by the Regional Court is set aside and this court is at liberty to sentence each appellant afresh.
4. Each appellant is sentenced to 8 years imprisonment back dated to 12 March 2010.
5. Each appellant had already served 8 years and each should be released forthwith.

**BY ORDER OF THE COURT**

*CMokomele*

Charlet Mokomele

**Registrar of the High Court**

**Main Division**

**Windhoek**

**TO:**

TREVOR BROCKERHOFF

On behalf of 2<sup>nd</sup> Appellant

Mbudje & Brockerhoff Legal Practitioners

No. 9 Salk Street. Windhoek West

Windhoek

Khomas

Namibia

KALUNDU KAMWI

On behalf of 1<sup>st</sup> Appellant

Sibeya & Partners Legal Practitioners

M2 Floor

Channel Life Building Post Street Mall

Windhoek

Namibia

Namibia

**AND TO:**

KARIN ESTERHUIZEN

On behalf of Respondent

Government - Office of the Prosecutor-General

High Court Building Luderitz Street

Windhoek

Namibia

Namibia

**AND TO:**