

IN THE HIGH COURT OF NAMIBIA

THE STATE

and

GLORIA IYAMBO

HIGH COURT REF NO. 1773/07

CORAM: MANYARARA, AJ *et* HINRICHSEN A.J

Delivered on: 21 December 2007

REVIEW JUDGMENT

HINRICHSEN A.J.

[1] In this matter the accused aged 18 years of age was charged with having committed the crime of abortion in contravention of Section 10 (1)(a), read with Section 1,2,3,5,6 and 11 of the Abortion and Sterilization Act 2 of 1975 (the Act) in that on or about 15th September 2007 she wrongfully and unlawfully procured an abortion. She pleaded guilty to the charge and stated in evidence that she performed the abortion on herself thereby interrupting a pregnancy of two months. She was found guilty and was sentenced to N\$3,000 or two years imprisonment on 17.09.2007. The Act prescribes no minimum sentence.

[2] This sentence is completely out of proportion to the crime committed. Even the Old Authorities stated that sentences for abortion should be less

severe where a very young foetus is involved. The foetus in this case is only two month's old. There seems to be a paucity of decisions concerning abortion.

[3] The Namibian case of the State v Haimbodi 1993 NLR, page 120 and the State v Alweendo 1993 NLR, page 177 deal only indirectly with abortion but indicate that sentences under circumstances like the present one are lenient.

[4] By comparison in the far more serious cases involving the concealment of birth the sentences are as a rule largely or totally suspended. (See the following unreported cases of the High Court of Namibia –

Lucrecia Luwango CC 9/99, 18 years of age, three years imprisonment totally suspended for 5 years on condition;
Lindia Shiwenda, CC 52/98, 19 years of age, 5 years imprisonment of which 4 years are suspended for 5 years on condition;)

[5] A further point to consider is that the accused is a minor. Although she had "...nothing to say" in mitigation, being a minor and undefended she should have been actively encouraged to inform the Court about her subjective circumstances and her motive for her deed. On this basis the Court hearing the matter could have established to what extent her youth contributed to the commission of the crime (See du Toit " STRAF IN SUID-AFRIKA" 1981 Ed. Pages 12 and 55 to 56).

[6] Rumpff C J in the undermentioned cases

S v Mohlobane 1969 (1) SA S61 A

S v Lehnberg and Another 1975 (4) SA 553 (A)

S v Matabane 1975 (4) SA 564 A

S v Maarman 1976 (3) SA 510 A

S v Mapatsi 1976 (4) SA 721 A

postulated that immaturity, inexperience, lack of reason, and gullibility experienced in youthful offenders cause them not to be measured morally by the same standards as adults. In the present case these principles were not applied.

[7] The sentence imposed by the Magistrate of Oshakati in this case is substituted for the following.

N\$300 or 3 months wholly suspended on condition that during the period of suspension the accused is not convicted of a crime containing the element of abortion.

HINRICHSEN A.J.

I agree

MANYARARA, AJ