

**CASE NO.: CA 113/2008**

“Not Reportable”

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**PHILLIP SHILULU**

**Appellant**

**vs**

**THE STATE**

**Respondent**

**CORAM: PARKER, J et SHIVUTE, J**

Heard on: 2010 June 18

Delivered on: 2010 June 18

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**APPEAL JUDGMENT**

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**PARKER, J** [1] The appellant (accused in the court below, i.e. Regional Court, Windhoek) was convicted of the offences of housebreaking with intend to commit a crime unknown to the Prosecutor (Count 1), and two counts of rape, in terms of the relevant provisions of the Combating of the Rape Act, 2000 (Act No. 8 of 2000), as amended (Counts 2 and 3). The appellant was accordingly sentenced on 17 April 2008. It appears the appellant appeals against the conviction and

sentence.

[2] In this appeal there are no grounds of appeal, filed with the record, as required by the rules of court (see *S v Gey van Pittius and another* 1990 NR 35). In this regard, the point must be made firmly that it is not part of the provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) or part of the notion of fair trial, under Article 12 of the Namibian Constitution, for an appellate court in criminal proceedings to *ex mero motu* search the nook and cranny of the record in order to look for irregularities and other faults respecting the decision and reasoning therefor of the presiding judicial officer in the court below. The appellant must, in order to succeed, place before this Court grounds upon which he or she relies to persuade this Court to fault the decision of the court below and so hold that that decision is wrong. Those are the grounds which must be placed on the record and which the State is then called upon to meet in the appellate Court. (*Gey van Pittius and Another supra*; *S v Kakololo* 2004 NR 7; *Kandjimuni Tjuumbua v The State* Case No. CA 08/2006 (Unreported); *Willy Harold Hendricks and another v The State* Case No. CA 172/2003 (Unreported); *Richard Goagoseb and Simon Ganeb v The State* Case No. CA 90/2005 (Unreported))

[3] As I have said, *in casu* there is not even a ghost of any grounds of appeal. All that the appellant has done is to repeat the defence he put up in the court below before the learned regional magistrate, which the learned regional magistrate rejected, his personal circumstances after

his conviction, and expressions of remorse. The appellant has also prayed for leniency of this Court, but he does not give one grain of reason why this Court should interfere with the sentence imposed by the court below. On the authorities, like those I have referred to previously, these do not constitute grounds of appeal.

[4] Thus, the appellant has not shown that the decision of the court below is wrong, and so this Court has no good reason to fault the decision of the lower court to convict the appellant on the offences he was charged with or to interfere with the sentence imposed by the lower court.

[5] In the result, the appeal is dismissed.

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**PARKER, J**

**I agree**

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**SHIVUTE, J**

**COUNSEL ON BEHALF OF THE APPELLANT:** Mr Shilulu

**Instructed by:**

In Person

**COUNSEL ON BEHALF OF THE RESPONDENT:** Mr Kuutondokwa

**Instructed by:**

The Prosecutor-General