

CASE NO.: CA 48/2008

“Not Reportable”

IN THE HIGH COURT OF NAMIBIA

In the matter between:

FRANS USEB

Appellant

vs

THE STATE

Respondent

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

Heard on: 2010 June 18

Delivered on: 2010 June 18

APPEAL JUDGMENT

PARKER, J [1] The appellant (accused in the court below, i.e. Regional Court, Otjiwarongo) was convicted of the offence of livestock, taking into account the relevant provisions of the Stock Theft Act, 1990 (Act No. 12 of 1990), as amended. He was duly sentenced on 23 May 2006. He now seeks to appeal against both conviction and sentence. The appellant concedes that he filed his notice of appeal out of time in

terms of the rules of court, and he applies for condonation of the late filing of the notice of appeal.

[2] The learned Regional Magistrate explained sufficiently well in pp. 192-3 of the record. I totally reject the self-serving explanation by the appellant why the notice of appeal was not filed within the statutory time limit. It is all too easy and mischievous to blame it all on the interpreter. The record does not confirm what the appellant says in this Court. The record rather shows that the learned regional magistrate's careful explanation ends with the question -

‘Did you understand the explanation concerning your right to appeal?’

Then the appellant responds as follows in clear, unmistakable words:

‘I understand, Your Worship.’

[3] The appellant has displayed an unmitigated and dishonest conduct when he now says he did not understand what the learned magistrate explained, and blames it all on the interpreter. He who sets out to deceive the Court does not deserve indulgence of the Court to overlook a breach of the rules of court. In my view ‘such serious untruth cannot on any ground possibly constitute an explanation of the late filing of his notice of appeal (*Kavapua v The State* Case No. CA 110/2005 (Unreported) at p. 2)’. There is no justification to grant the indulgence sought by the appellant, and so I refuse to condone the late filing of the notice of appeal by the appellant. The appeal is accordingly removed from the roll.

PARKER, J

I agree

SHIVUTE, J

COUNSEL ON BEHALF OF THE APPELLANT: Mr Useb

Instructed by: In Person

COUNSEL ON BEHALF OF THE RESPONDENT: Mr/Ms Campher

Instructed by: The Prosecutor-General