



**CASE NO.: CA 28/2008**

NOT REPORTABLE

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**SIMON PETRUS GANEB**  
**APPLICANT/APPELLANT**

and

**THE STATE**  
**RESPONDENT**

**CORAM:**           **HOFF, J et VAN NIEKERK, J**

Heard on:           16 September 2011

Delivered on:      16 September 2011      *(Ex tempore)*

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**JUDGMENT**

*(Application for leave to appeal)*

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**HOFF, J:**   [1]   The applicant was convicted in the magistrate's court for the theft of seven heads of cattle and sentenced to 5 years imprisonment.

In an appeal to this Court the conviction and sentence were set aside and substituted with a conviction of theft of three heads of cattle from persons unknown to this court. The sentence however was confirmed.

[2] From the documents filed it now appears that the applicant, who appears in person, applies for leave to appeal against the conviction as well as the sentence. The appeal was heard on 14 November 2008 when the judgment was delivered. The reasons were provided on 27 November 2009.

The applicant filed a document on 17 August 2011 which appears to be an application for leave to appeal to the Supreme Court. Another document filed on 4 February 2011 also purports to be an application for leave to appeal to the Supreme Court.

In these documents the appellant attempts to deal with grounds in his view why the magistrate erred in convicting him as well as perceived grounds why this Court erred in confirming the conviction of theft (albeit for a lesser amount of stock) and why in his view the sentence imposed was “unlawful”.

[3] Mr Maronedze who appears on behalf of the respondent with reference to the provisions of section 316 of the Criminal Procedure Act, Act 51 of 1977, submitted that the application for leave to appeal was filed out of time and that there is no condonation application explaining why the application was filed out of time.

[4] In terms of section 316 referred to (*supra*) an accused convicted of any offence before the High Court of Namibia, may within a period of fourteen days after the passing of the sentence or order following on the conviction or within such period as the court may on application and for good cause shown, apply to the judge who presided at the trial for leave to appeal against his or her conviction or against any sentence or order following thereon.

[5] Such an application for leave to appeal shall set forth clearly and specifically the grounds upon which the accused desires to appeal.

[6] There is no application before us in which the applicant explains the late filing of his application for leave to appeal.

The first document (filed on 4 February 2011) was filed 14 months out of time and the second document (filed on 17 August 2011) was filed 21 months out of time. These periods are calculated from the date the reasons were provided. It is clear that if the periods were to be calculated from the date of conviction or the passing of sentence the periods of default will increase.

[7] The applicant has now handed up a paper entitled "Application for condonation for late filing of this affidavit explaining the grounds and reasons for late filing condonation". This is however no affidavit and contains no reasons explaining the late filing of his application for leave to appeal. This document is also dated 4 February 2011 and appears to be a copy. He now blames the late filing on wrong information received from the registrar.

[8] It is trite law that in a situation in which the applicant finds himself, that an application for condonation of the late filing of his application is a prerequisite in which an applicant is required to give a full and satisfactory explanation, by way of an affidavit, for whatever delays that have occurred. Such an application is presently non-existent.

In addition an applicant must show that there are reasonable prospects of success on appeal on the merits of the case.

[9] Where there was non observance of the provisions of section 316 (irrespective of whether the applicant is a lay person or was legally represented) or where non observance was flagrant and gross, as in the present case, the application should not be granted whatever the prospects of success might be.

[10] For this reason alone the application for leave to appeal stands to be struck down.

[11] Nevertheless this Court is of the view that there are no reasonable prospects of success on appeal on the merits of this case. I am of the view that in respect of the conviction that there are no reasonable prospects that a Court of appeal will have a different view. I say this having considered questions of fact as well as legal principles and the appropriate statutory provisions as well as the submissions made by the applicant.

[12] The applicant advanced no grounds against his sentence except to make the averment or inference that it is shockingly inappropriate and induces a sense of shock.

[13] It is trite law where a notice of appeal contains no grounds it is not a valid notice of appeal and is as such a nullity which has no force or effect and which cannot be resurrected or revived.

[14] In the result the following order is made:

The application for leave to appeal is dismissed.

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**HOFF, J**

I agree

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**VAN NIEKERK, J**

**ON BEHALF OF THE APPLIANT/APPELLANT:  
PERSON**

**IN**

**Instructed by:**

**ON BEHALF OF THE RESPONDENT:  
MARONDEDZE**

**ADV.**

**Instructed by:  
GENERAL**

**OFFICE OF THE PROSECUTOR-**