



CASE NO.:

CA74/2009

IN THE HIGH COURT OF NAMIBIA

In the matter between:

BRIAN KUKURI

and

10

THE STATE

**CORAM: MILLER, AJ
UNENGU, AJ**

Heard on: 2011.10.24

Delivered on: 2011.10.24 (*Ex tempore*)

JUDGMENT:

20 **MILLER, AJ:** The Applicant in this matter was convicted and sentenced in the Regional Court on the 2nd of February 2009 of

the crime of rape as defined in the Combating of Rape Act, Act 8 of 2000. An Appeal directed to this Court against the conviction and Sentence was disposed on the 12th of November, 2010. The Applicant now applies for leave to Appeal to the Supreme Court of Namibia against the dismissal of his Appeal.

Before us, the Applicant appeared in person and the State was represented by Ms Nyoni. Ms Nyoni took the point *in limine* that the Application for leave to appeal was filed out of time and that
10 there was no application for condonation. I am not prepared to entertain that point.

The Applicant was at all times unrepresented, and I do not expect him to be familiar with the provisions of the Criminal Procedure Act relating to time periods within which applications of this nature should be filed. Moreover, he had applied for legal assistance, through the Legal Assistance Centre and that was declined. In the circumstances, I will condone the late filing of the application.

20

In order for an Applicant who applies for leave to appeal to the Supreme Court against the dismissal of his appeal to succeed, it is incumbent on the Applicant to satisfy us that a different Court,

in this case the Supreme Court on Appeal, will as a likelihood come to a different conclusion. I am satisfied that another Court will not come to a different conclusion.

The case against the Appellant was overwhelming so to speak. The evidence of the Complainant that she was raped by two persons on the evening in question is to a large extent corroborated by the fact that she was able to point out to the police the spot where the alleged crime was committed, being in
10 the veld. At the point she pointed out the police officer, who accompanied her observed drag and wrestling marks. It is also evident that upon the Complainant being examined, it was observed that there was grass in her hair and that she had sustained scratches and bruises to her legs. This is entirely inconsistent with any allegation the that the Applicant made at the trial that there was consensual sex between them at his house.

It flies even further in the face of the contention of the
20 Applicant, if that was his contention, that no intercourse took place at all.

As far as sentence is concerned, it is apparent that both the Learned Magistrate who sentenced the Applicant as well as the

Judges presiding at the Appeal, which was dismissed, did not in any respect commit any irregularity. The sentence strikes me in any event as being a proper sentence given the circumstances of the crime and the circumstances under which it was committed.

In view thereof, the Application for Leave to Appeal is dismissed, in my opinion.

UNENGU, AJ: I concur.

10

MILLER, AJ

20

30

ON BEHALF OF THE APPELLANT
PERSON

IN

ON BEHALF OF THE RESPONDENT
NYONI

MS

10

Instructed by: OFFICE OF THE PROSECUTOR
GENERAL