



## HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

## JUDGMENT

Case no: CA 39/2012

In the matter between:

**PAUL KANGA KANOGE****APPELLANT**

and

**THE STATE****RESPONDENT**

**Neutral citation:** *Kanoge v State* (CA 39/2012) [2012] NAHCMD 45 (12 October 2012)

**Coram:** MILLER AJ and PARKER AJ

**Heard:** 12 October 2012

**Delivered:** 12 October 2012

**Flynote:** Criminal procedure – Notice of appeal – Such notice should clearly set out grounds of appeal – This rule of practice is not to be ignored without good cause.

**Summary:** Criminal procedure – Notice of appeal – Such notice should clearly set out grounds of appeal – Such grounds are required to enable the State to apprise itself as to what case to meet and for the court to properly adjudicate the appeal – It is also required for the proper administration of criminal justice – There is no good reason why the rule should not apply to legal practitioners and lay appellants, too.

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## ORDER

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The appeal against conviction is dismissed.

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## JUDGMENT

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PARKER AJ (MILLER AJ concurring):

[1] The appellant represents himself. The State is represented by Mr Kumalo who filed heads of argument and he stand by it.

[2] The appellant appeared in the Windhoek Regional Court on one count of theft of a motor vehicle, read with the Motor Vehicle Theft Act 12 of 1999. He pleaded not guilty to the charge. He was tried and convicted and accordingly sentenced to 15 years' imprisonment. The appellant appeals against conviction only; and in his notice of appeal, the appellant raises six grounds of appeal.

[3] I have given great thought to what he says are the grounds; and having done so, I am firmly of the opinion that, upon the authority of *S v Gey van Pittius and Another* 1990 NR 35, there are no proper grounds before the court. They are all conclusions drawn by the appellant. In *S v Gey van Pittius*, Strydom AJP (as he then was) at 36H stated:

'The purpose of grounds of appeal as required by the Rules is to apprise all interested parties as fully as possible of what is in issue and t bind the parties to those issues. (See further in this respect the judgment of my Brother Frank AJ in the matter of *S v Wellington* (1990 NR 20) and the cases referred to therein.)'

[4] The principle enunciated in *S v Gey van Pittius* has been followed in many cases by the court. For instance in *S v Kakololo* 2004 NR 7 at 8F-9A, Maritz J (as he then was) developed the principle further and explained it as follows:

'The noting of an appeal constitutes the very foundation on which the case of the appellant must *stand or fall* (*S v Khoza* 1979 (4) SA 757 (N) at 758B). It serves to inform the trial magistrate in clear and specific terms which part of his or her judgment is being appealed against, what the grounds are on which the appeal is being brought and whether they relate to issues of law or fact, or both ... .

The notice also serves to inform the respondent *of the case it is required to meet* and, regard being had to the record and the magistrate's reasons, whether it should concede or oppose the appeal. Finally, *it crystallizes the disputes and determines the parameters within which the Court of Appeal will have to decide the case* (Compare: *S v Maliwa and Others* 1986 (3) SA 721 (W) at 727; *S v Nel* 1962 (1) SA 134 (T) at 135A; and *R v Lepile* 1953 (1) SA 225 (T) at 230H.)

Consequently, *it also serves to focus the minds of the Judges of Appeal* when reading the (sometimes lengthy) record of appeal, researching the law in point, considering argument and adjudicating the merits of the appeal.' (My emphasis)

[5] Upon the authorities, I find that there are no grounds of appeal which this court may consider in adjudicating the merits of this appeal. Granted, the appellant is a lay litigant and he represents himself; but these are not cogent reasons to persuade this court not to follow *S v Gey van Pittius* and *S v Kakololo*. Indeed, there are no merits in the grounds that call on this court to adjudicate. I, therefore, hold that this appeal must fail.

[6] In the result the appeal against conviction is dismissed.

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C Parker  
Acting Judge

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P J Miller  
Acting Judge

APPEARANCES

APPELLANT: In Person.

RESPONDENT: P S Kumalo  
Of Office of the Prosecutor-General, Windhoek.