

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

APPEAL JUDGMENT

Case no: CA 18/2013

In the matter between:

VINCENT KAHUA

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation: *Kahua v The State* (CA 18/2013) [2013] NAHCMD 223 (12 July 2013)

Coram: UEITELE, J *et Unengu, AJ*

Heard: 12 July 2013

Delivered: 12 July 2013

Flynote: Removal of appeal from the roll for non-appearance– Default position is that appeal will be struck from the roll if appellant does not appear on the date set down for the hearing of the appeal.

Summary: The appellant was charged and convicted of displaying on his motor vehicle, a number-plate which was not for that vehicle. On the date the appeal was set down for hearing the appellant or his instructed legal representative did not appear.

Held that in this case there were no grounds advanced by either the appellant or his legal practitioner of record Mr G Kasper of Murorua & Associates for his non appearance.

Held that the appeal is struck from the roll on account of the non-appearance of an appellant.

ORDER

The appeal is struck from the roll on account of the non-appearance of an appellant.

JUDGMENT

UEITELE, J

[1] In this matter the appellant was, 07 February 2013, convicted in the District Magistrates' Court for the District of Omaruru (sitting at Omaruru) on a charge of displaying a licence number not applicable to a motor vehicle (in contravention of Regulation 48(5)(a) read with sections 1, 86, 89 and 91 of the Road Transportation Act, 1999 (act No. 22 of 1999). The appellant was sentenced to pay a fine of N\$ 4000 and in default of payment of the fine to imprisonment for a period of one year. Half of

the sentence that is, the amount of N\$ 2000 or the six months imprisonment is suspended for a period of five years on condition of good behavior.

[2] On 18 March 2013 the appellant through his legal practitioners noted an appeal against his conviction. The registrar set down the hearing of the appeal for Friday 12 July 2013. The Notice of Set Down of the hearing of the appeal was served on the appellant's legal representative on 11 April 2013. In the Notice of Set Down the appellant's attention was drawn to Rule 55(5) of the High Court Rules. (This rule requires an appellant to deliver a concise statement of his main arguments at least five days before the appeal, to the Registrar of the High Court.

[3] On the date on which the appeal was set down for hearing (i.e. on 12 July 2013) the appellant or his legal representative failed to appear in court to prosecute his appeal. In addition to the failure to appear the appellant also failed to comply with the directive issued in terms of Rule 55(5).

[4] In the result the appeal is struck from the roll.

SFI Ueitele

Judge

EP Unengu

Acting

APPEARANCES

APPELLANT:

NO APPEARANCE

RESPONDENT:

Mr Nduna
Of Government Attorney