

**SAFLII Note:** Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

REPUBLIC OF NAMIBIA

REPORTABLE



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CA 88/2013

In the matter between:

**MBENOVANDU MURANGI**

**APPELLANT**

and

**THE STATE**

**RESPONDENT**

**Neutral citation:** *Murangi v The State* (CA 88/2013) [2013] NAHCMD 50 (14 February 2014)

**Coram:** SMUTS, J *et* MILLER AJ

Heard: 10 February 2014

Delivered: 14 February 2014

**Flynote:** Notice of Appeal filed out of time – Application for condonation – Applicant must provide a reasonable explanation for the delay. In addition applicant must establish that there are reasonable prospects of success.

Applicant not establishing latter requirement. Condonation refused and appeal struck from the roll.

---

### ORDER

---

Condonation refused and appeal struck from the roll.

---

### JUDGMENT

---

MILLER AJ (SMUTS, J concurring): [1] The appellant was charged with and convicted of the crime of Rape read with the provisions of the Combating of Rape Act, Act 8 of 2000.

[2] The allegation was that the appellant had sexual intercourse with one L[...] K[...] under coercive circumstances, on 06 October 2010.

[3] During the course of the trial before the regional magistrate in Windhoek, it was common cause that the appellant had sexual intercourse with the complainant on the night in question. The defence raised by the appellant was that the admitted sexual intercourse was consensual.

[4] Having heard the testimony of several witnesses including that of the appellant, the learned regional magistrate concluded that the state had proved beyond reasonable doubt that the intercourse was not consensual. He accordingly convicted the appellant. The appellant was sentenced to fifteen years imprisonment.

[5] The appellant now appeals against the conviction. In his notice of appeal the following grounds of appeal are listed:

- i) The learned Magistrate erred in law and/or fact in finding that the state proved its case beyond a reasonable doubt if regard is had to the correlation between the charge brought forth and evidence elicited.
- ii) The learned magistrate erred in law in finding the complainant being a single witness was coherent and credible as a witness as the contrary is true.
- iii) The learned magistrate erred in law in totally failing to find the evidence of both the complainant and the accused were mutually destructive and that there was no probable reason why the accused's version was rejected without a proper evaluation being made.
- iv) The learned magistrate misdirected himself on the law by failing to heed to the principle governing inference as enunciated in *S v Blom* that the inference sought to be drawn must be the only one to the exclusion of any other.
- v) The learned magistrate erred in law and fact in that he failed to apply his mind judicially and/or took irrelevant consideration when convicting the accused.'

[6] The notice of appeal was filed out of time. Consequently the appellant was obliged to seek condonation for the late filing.

[7] It is settled law that in order to succeed in an application for condonation two requirements need to be met.

[8] Firstly the appellant must provide a reasonable explanation for not filing the notice of appeal on time. Secondly the appellant must show that he has reasonable prospects of success on appeal.

*(S v Nakapela and Another 1997 NR 184 (HC)).*

[9] As far as the first leg of the enquiry is concerned the appellant states that the delay was occasioned by the fact that the Directorate of Legal Aid did not appoint a legal practitioner in time. This allegation is not really disputed by the State. I will accordingly find for the appellant on that score.

[10] In my view however the appellant stumbles over the second hurdle.

[11] The complainant testified that during the incident she screamed for help. Her testimony on that issue is corroborated by the evidence of one Ririheko and one Louw who heard the screams.

[12] In addition the complainant testified that she sustained certain injuries during the incident. This allegation is supported by the findings of the medical practitioner who examined her the following day.

[13] The learned magistrate accepted this evidence and to my mind rightly so.

[14] The learned magistrate also found that the probabilities favoured the version advanced by the complainant. That finding can likewise not be faulted.

[15] The judgment of the learned magistrate is a reasoned one and the findings he made are fully supported by the evidence adduced.

[16] In the result I will dismiss the application for condonation.

[17] The appeal is struck from the roll.

-----

P J Miller  
Judge

I agree

5  
5  
5  
5  
5

-----  
D F SMUTS  
Judge

APPEARANCES

APPELLANT:

M TJITURI  
Of Tjituri Law Chambers

RESPONDENT:

I M NYONI  
Of Office of the Prosecutor-General