

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

Case No: CC 9/2018

**THE STATE**

v

**CHARLES WINSTON MANALE**

**Neutral citation:** *S v Manale* (CC 9/2018) [2019] NAHCMD 118 (25 April 2019)

**Coram:** USIKU, J

**Heard:** 28 February 2019 and 01 March 2019

**Delivered:** 25 April 2019

**Flynote:** Sentence – Fraud – Accused convicted on 147 counts of fraud – One count of money laundering – Offences committed over a long period of time – Accused in a position of trust at the time of the commission of the offences – Offences of fraud prevalent, premeditated and on the increase – Deterrence as an object of punishment important due to increase of such crimes in Namibia – Lesser weight placed on the accused's personal circumstances – Custodial sentence unavoidable.

**Summary:** The accused was arraigned on 147 counts of fraud to which he pleaded guilty and was convicted as charged. He faced a count of money laundering to which he pleaded not guilty but was subsequently convicted as charged. Accused was an employee of Standard Bank Namibia. At the time of the offence thus in a position of trust. Society no longer tolerate dishonesty as such a strong message must be sent out to the accused as well as would be offenders.

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### **ORDER**

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Counts 1 to 147: The accused is sentenced to 17 years imprisonment of which two years imprisonment are suspended for five years on condition that accused is not convicted with the crime of fraud or any offence of which dishonesty is an element, committed during the period of suspension.

Count 148: In respect of count 148 accused is sentenced to five years imprisonment. The sentence of five years imprisonment imposed in respect of count 148 is ordered to run concurrently with the sentence imposed in respect of count 1 to 147.

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### **SENTENCE**

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#### **USIKU J:**

[1] The accused was convicted on his plea of guilty in this Court on 147 counts of fraud after the prosecutor inform the court that accused was represented by counsel and intended pleading guilty to all counts of fraud and to that end counsel had prepared a written statement in terms of section 112 (2) of the Criminal Procedure Act, Act 51 of 1977 as amended. Accused had however tendered a plea of not guilty to the count of money laundering but after further evidence was led, he was also found guilty and convicted. The frauds to which the accused pleaded guilty and on

which he was convicted were perpetrated during a period of over 17 months. The total amount involved is about five million.

Accused testified in mitigation of sentence:

[2] He is aged 35 years old. He has two sisters and one brother. All his siblings are gainfully employed. He attended school in Windhoek and his highest qualification is a diploma obtained in 2004 in business administration. He was employed at several business houses prior to him getting a job with Standard Bank Namibia in 2008. He also worked for a stint at First National Bank Namibia.

[3] At the time of his arrest he held a position of Senior Estate and Trust officer earning N\$20 000 per month. He was entitled to a housing subsidy benefit of N\$2500 per month, a pension as well as medical aid. With the assistance of the housing benefit he bought Erf number 7653 in Golgota Katutura Location which house belonged to his parents. The house is currently valued at ± N\$700 000 of which he now owe N\$4000 000.

[4] Accused testified further that he received summons during 2018 and had been informed that the house is to be sold on auction during the month of March 2019. The vehicle he bought has also been confiscated by the police. To date he has no idea what happened to the vehicle. His pension which is about N\$300 000 will probably be taken by Standard Bank, Namibia. Accused further testified that he is not in a position to pay a fine as all his money had already been taken over by Standard Bank Namibia.

[5] With regard to the offence of fraud accused testified that it started small whereafter it escalated and it became an addiction which he could not stop. The money he defrauded the bank was mostly used for entertainment purposes. He also help out friends whom he felt were in need as well as their church choirs. Even though he knew that he will be caught one of the days, he went on with his criminal activities.

[6] After his friend Kauko, whom he claim to have worked together with in the commission of the fraud died accused continued to defraud the bank. After he was arrested and charged he tendered a plea of not guilty but later changed his mind and decided to plead guilty to the charges of fraud. He was incarcerated for about one year and eight months whereafter he was released on warning after charges were withdrawn against him. He was later on summoned to appear before court.

[7] According to him he feels bad for what he did and regret his actions. He is aware that he will be sentenced to a term of imprisonment and he has had sleepless nights ever since his arrest and is ashamed.

[8] In submissions Mr Wessels for the accused conceded that accused has been convicted of very serious offences. Also that accused had been gainfully employed at the time of the commission of the offences. Accused is not in a position to make any contribution towards the loss the Bank has suffered. However, accused had been honest and did not lie about what he had used the money for.

[9] He tendered a plea of guilty thereby showing his remorse for what he had done. Further that accused was incarcerated for 20 months after his arrest. He is capable to be reformed as he is still in his prime age. He referred the court to a case of fraud which was recently finalised in this court in which the court sentenced the accused on a charge of fraud and money laundering to a term of imprisonment part, of which was suspended. The court had ordered the sentences to run concurrently.

[10] On the other hand Ms Moyo for the state requested the Court to impose a deterrent sentence taking into account the seriousness of the offences committed. Not only because of the value involved but also the fact that the fraud was committed against the employer. The people who suffered as a result of the fraud were not only the employer but also those who were supposed to benefit from the deceased's estates. She further submitted that in fact the accused stole from the deceased persons.

[11] Accused having been in a position of trust at the time of the commission of the offence, betrayed that trust by defrauding his employer which he did 147 times over

a period of time. He betrayed the trust of his subordinates over and above his employer by loading false claims on the system of Standard Bank Namibia using his subordinate's pass words and then asking them to offload without their knowledge that the claims were fraudulent, whereafter he proceeded to approve the claims and transfer the money into his account held at First National Bank and later on into his other account at Standard Bank Namibia.

[12] It was further submitted that the court must consider the period over which the offences were committed which made it difficult to detect the fraud because accused had used various deceased person's accounts and had manipulated the system. Accused's fraudulent conduct cannot be said to have been out of need, he was gainfully employed. He had a bond which he used to pay through his salary. He was therefore able to sustain himself. One can only conclude that the frauds were committed out of greed.

[13] Although accused admitted to having hatched a plan with late Kauko, he changed his version and informed the court that it was his own plan to defraud his employer. Some of the proceeds were used to support his brother's children whilst the brother had been gainfully employed and earning his own salary. To date nothing was left from the millions and no single cent was paid towards his mortgage bond.

[14] It was further submitted that Courts in sentencing must consider consistency in relation to cases of similar nature because consistency and uniformity plays in the community's confidence in the judicial system. However, whereas in the case cited by the defence, the accused had also pleaded guilty to fraud and money laundering, the amounts involved, which was the actual loss suffered in the case referred to, was merely a fraction of what the accused did in the case before this court. Thus to a certain extent, the two cases are distinguishable.

[15] Fraud is always a grave and ugly offence, and worse when it is fanned by human cupidity over a deliberative period. <sup>1</sup> What is particularly heinous in this case is the fact that the fraud was deliberately planned and it was deliberately perpetrated

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<sup>1</sup> *S v Naomi Estelle Small* Case No CC 69/1994, delivered on 24 July 1995.

147 times over a period of 17 months. The accused had ample time for reflection and a change of heart. There is thus revealed a protracted and contemptuous indifference to integrity designed to frustrate the detection of repetitive and gainful crimes.

[16] This Court is of the view that the seriousness of these offences is considerably aggravated by the fact that the accused was in a position of trust having been a Senior Estate officer. He was entrusted with the supervisory responsibilities over Estates officers in the Deceased Estates Department of Standard Bank Namibia. It is common cause that the accused's position of trust was analogous to that of a stockbroker in respect of which absolute honesty and nothing less is required from a broker, and if a broker fall short of this standard, he/she must expect the full rigor of a severe sentence to be visited upon him both as punishment and to serve as a deterrent to others (see *S v Blank*).<sup>2</sup>

[17] Indeed in this case the offences were premeditated and the facts show how accused deliberately worked out intricate methods to defraud the various deceased persons who became victims of his deceptions. The frauds were committed over and over. Accused did not stop but persisted with his fraudulent activities, often committing further frauds in an attempt to cover up his criminal behaviour. The frauds were committed from January 2011 up to and including the month of December 2015.

[18] About five million was misappropriated by the accused. An amount of N\$806 520.20 were credited into Daniel Kauko Nehale's account, another amount to the tune of N\$4 249 042.95 was credited into the accused's personal account, without the knowledge and consent of the legitimate beneficiaries of the debited Estate accounts of which the accused personally verified. This Court is appalled to see the cold blooded and callous manner in which accused acted with regard to the already deceased persons.

[19] The grave consequences of the frauds that you committed include a massive actual prejudice of your victims representing various levels of society. I also take

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<sup>2</sup> *S v Blank* 1995 (1) SACR 62 (A) at 72 E – F.

judicial notice of the fact that crimes of dishonesty are not only prevalent but are also on the increase in this jurisdiction. Today's sentence should therefore send a powerful message to those that are entrusted with public funds, that their ranks is not a shield against criminal liability. Senior members of banking institutions who commit crimes will be held to account to the full extent of the law.

[20] The accused herein tendered a plea of guilty as an indication of his remorse which is a factor to be considered. However, it is the duty of the Court to consider also the circumstances of the case as there might be so much overwhelming evidence against (him) the accused that he has no option then to plead guilty. In the matter of *State v Mathues Uanga Werner*<sup>3</sup> in which the Court dealt with a guilty plea, as an indication of remorse, the Court held: 'That the accused's plea of guilty as an indication of his remorse must be considered in the circumstances of the case as there might be so overwhelming evidence against (him) the accused that he has no option then to plead guilty'. Accused pleaded guilty to 147 counts of fraud perpetrated over a period of time. Surely the evidence of the fraud was so overwhelming and accused had no other option then to unequivocally admit to the charges as he has done.

[21] It has almost become a common practice in our Courts that where an employee breaches the trust that was placed on him or her, the Court's duty is to punish that person upon conviction and it is desirable that a custodial sentence be imposed.

[22] That the money was expended on unnecessary goods and resources should be considered as an aggravating factor. The Court regarded the repeated abuse of trust by the accused over a period of time as an aggravating factor. (see *S v Emmanuel Kapumba Mununga*).<sup>4</sup> Similarly in *S v Madjiedt*<sup>5</sup> the Court held: 'That the accused was not only in a position of trust, but single handedly and without any outside pressure or influence, executed the fraud by manipulating the company's accounting system ... All the foregoing substantially increases the accused's moral

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<sup>3</sup> *State v Mathues Uanga Werner*, Case No 22/2008 (HC).

<sup>4</sup> *S v Emmanuel Kapumba Mununga* an unreported judgment of the High Court, delivered on 5 October 2005.

<sup>5</sup> *S v Madjiedt* CC 11 of 2013 NHCMD 289 delivered on 1 December 2015.

blame worthiness and should therefore have significant bearing on the sentence to be imposed’.

[23] Fraud behaviour hinders development and puts off prospective inventors in our economy. Clearly no one would be willing to invest his/her money in a bank were it could end up being misappropriated by thieves and the like.

[24] Furthermore, the Court is persuaded in what was stated in the case of *Madjiet (supra)* where the court went on to state ‘that a disquieting aspect of so-called white collar crimes, is that, there is currently an alarming increase in these crimes in Namibia, which conclusion is fortified by the large number of cases coming before the Lower Courts as well as those tried by this Court.’

[25] In sentencing the accused the Court is thus entitled to take judicial notice of the increasing, prevalence of ‘white collar crime’ committed in this jurisdiction. Theft from employer invariably attracts a sentence of direct imprisonment in our jurisdiction even in cases of first-time offenders. Thus in the case of *S v Ganes*<sup>6</sup> it was held ‘The sentence of this Court should underscore the value placed by the community on integrity and self-control in the work place and in business dealings. Businessman and women should also realise that the saying “all is fair in business” is not a motto by which to operate. Employees and the community at large as well as prospective offenders must know that it is not worth their while to commit serious offences like the one in this case.’

[26] The Court shares the same sentiments above and it is for that reason that the only reasonable sentence the Court has to consider in this case is a term of a custodial sentence.

[27] In the result, the following sentences are considered to be appropriate under the accused’s circumstances and he is sentenced as follows:

Counts 1 to 147: The accused is sentenced to 17 years imprisonment of which two years imprisonment are suspended for five years on

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<sup>6</sup> *S v Ganes* 2005 NR 472 (HC) at 481.



condition that accused is not convicted with the crime of fraud or any offence of which dishonesty is an element, committed during the period of suspension.

Count 148: In respect of count 148 accused is sentenced to five years imprisonment. The sentence of five years imprisonment imposed in respect of count 148 is ordered to run concurrently with the sentence imposed in respect of count 1 to 147.

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D N USIKU  
Judge

**APPEARANCES:**

STATE: Ms Moyo  
Office of the Prosecutor-General, Windhoek

ACCUSED: Mr Wessels  
Instructed by Directorate of Legal Aid, Windhoek