



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI

LEAVE TO APPEAL JUDGMENT

Case No.: CA 32/2014

In the matter between:

THE STATE

APPLICANT

and

JESAYA TULONGA NAKWAHONGA

RESPONDENT

Neutral citation: *S v Nakwahonga* (CA 32/2014) [2017] NAHCNLD 72 (28 July 2017)

Coram: JANUARY J

Heard: 21 July 2017

Released: 28 July 2017

Flynote: Criminal Procedure – Leave to Appeal – Acquittal – Another Court may come to different conclusion – Prospects of success.

Summary: The respondent was acquitted on a charge of: Assault with intent to do grievous bodily harm. Counsel for the respondent conceded that the verdict should be overturned and substituted with a verdict of guilty of common assault. This court finds that another court may come to a different conclusion than the court *a quo* and that there are reasonable prospects for success on appeal evaluating the evidence as a whole. Leave to appeal is accordingly granted.

ORDER

1. Condonation for the late filing of the Notice to appeal is granted;
 2. Leave to appeal against the acquittal is granted.
-

LEAVE TO APPEAL JUDGMENT

JANUARY J

[1] The State applied for leave to appeal in this matter to appeal in terms of section 310 of the Criminal Procedure Act, Act 51 of 1977 (the CPA). The application relates to the acquittal of the respondent on a charge of; Assault with intent to do grievous bodily harm.

[2] The applicant is represented by Mr Gaweseb and the respondent by Mr Nsundano. The respondent was acquitted on 25 July 2011 and it is regrettable that the application could only be heard on 21 July 2017.

[3] This court handed down a ruling on 28 July 2017 in terms whereof;

1. Condonation for the late filing of the Notice to appeal is granted, and
2. Leave to appeal against the acquittal is granted.

[4] This court explained to counsel that in terms of the Amendment of High Court Practice Directions in accordance with Government Notice 10 of 01 February 2017, PD 61(9), that Judges are encouraged to make orders without detailed reasoned judgments. Mr Nsundano then requested me for reasons in relation to the aspect of granting condonation.

[5] Mr Gaweseb filed an application for the condonation of the applicant's late filing of the Application for leave to appeal with an affidavit of Mr Matota who filed the application for leave to appeal. Applicant was a day late with the filing of same. This application was not opposed by respondent. I granted the application and condoned the late filing of the application for leave to appeal as I find no prejudice for the respondent.

[6] Mr Nsundano in his heads of argument on the merits conceded that there are prospects of success on appeal in that he submitted that the acquittal should be overturned and substituted with a conviction of common assault as opposed to assault with intent to do grievous bodily harm. I did not decide the issue of which type of assault it is.

[7] It is for these reasons that I granted the order as I did.

H C JANUARY

JUDGE

Appearances:

For the Applicant:

Adv Gaweseb

Of Office of the Prosecutor-General

For the Respondent:

Mr Nsundano

Of Legal Aid – Oshakati High Court