



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI

JUDGMENT

Case no: CA 47 / 2014

In the matter between:

ISRAEL SUN SHILONGO

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation: *Shilongo v S* (CA 47/2014) [2017] NAHCNLD 75 (2 August 2017)

Coram: TOMMASI J
Heard: 21 November 2014
Delivered: 21 November 2014
Reasons Released: 2 August 2017

Flynote: Bail Appeal — Appeal against district court’s refusal to admit the appellant to bail pending the finalization of the investigation —Order ought to be final in nature —Counsel for respondent conceded to the setting aside of the order by magistrate and to the appellant being admitted to bail.

ORDER

1. The decision of the magistrate for the district of Outapi under case no 298/2014 refusing the appellant's released on bail is set aside and substituted with the following order:
 - (a) The accused is granted bail in the amount of N\$5000.00 on condition that he timeously appears on the dates and times to which the case is remanded in the magistrate's court for the district of Outapi.

REASONS

TOMMASI J

[1] This is an appeal against the refusal by the learned magistrate in the district court of Outapi to admit the appellant to bail.

[2] The court heard counsel and having perused the record of the proceedings made the following order:

- '1. The decision of the magistrate for the district of Outapi under case no 298/2014 refusing the appellant's released on bail is set aside and substituted with the following order:
 - (a) The accused is granted bail in the amount of N\$5000.00 on condition that he timeously appears on the dates and times to which the case is remanded in the magistrate's court for the district of Outapi.'

These are the reasons for the aforesaid order.

[3] The appellant was arrested on 29 July 2014 on charges of fraud, forgery and uttering and contravention of section 94 of the Customs and Exercise Act, 1998 (Act 20 of 1998). On 8 September 2014 the court *a quo* made the following order: 'Accused's application for bail is denied and he is to be remanded in custody pending the finalization of the investigation to wit 3 months.'

[4] The order made is flawed in that it denies admission to bail but postpones a final decision regarding his admission to bail for a further three months. The order should be final in nature and either admit or refuse the appellant to be admitted to bail.

[5] When the matter was heard counsel for the respondent informed the court that the investigating officer no longer objected to the appellant being admitted to bail and counsel for the respondent conceded that appellant ought to be admitted to bail.

[6] This court was satisfied that justice would be served if the appellant be admitted to bail in view of the concession made by counsel for the respondent, and having considered the learned magistrate's reason for refusing to admit the appellant to bail and having read the record the court made the following order:

1. The decision of the magistrate for the district of Outapi under case no 298/2014 refusing the appellant's released on bail is set aside and substituted with the following order:
 - (a) The accused is granted bail in the amount of N\$5000.00 on condition that he timeously appears on the dates and times to which the case is remanded in the magistrate's court for the district of Outapi.'

MA Tommasi

Judge

APPEARANCE

For the Applicant:

Mr Nambahu

Of Nambahu & Associates

For the Respondent:

Mr Lisulo

Office of the Prosecutor General

Oshakati