

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION  
HELD AT OSHAKATI

JUDGMENT

Case no CA: 15 /2017

In the matter between:

NIKANOR TUNYANYUKWENI IIPINGE

APPLICANT

v

THE STATE

RESPONDENT

**Neutral citation:** *lipinge v S* (CA 15/2017) [2018] NAHCNLD 34 (12 April 2018)

**Coram:** TOMMASI J

**Heard on:** 8 March 2018

**Delivered:** 12 April 2018

**Flynote:** Application for Leave to Appeal – no reasonable prospects of success  
– application for leave to appeal dismissed.

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**ORDER**

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The application for leave to appeal is dismissed.

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**JUDGMENT**

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TOMMASI J;

[1] The applicant herein appealed against the sentence imposed by the learned magistrate of Ondangwa district court in respect of one count (count 7) of 5 years' imprisonment. This court dismissed his appeal and he now applies for leave to appeal to the Supreme Court.

[2] The appellant filed a document called 'urgent application for leave to appeal'. I summarize his points in the document as follow:

(a) I apply for the honorable judge to set aside the sentence of N\$4000 or three years' imprisonment;

(b) This sentence is inappropriate as the court ordered that this sentence to run consecutively with the sentence imposed in count 7.

(c) I request the court to refer my case (Case 134/2012).

[3] On 6 November 2011, he wrote another letter titled 'Quest for Urgent application regarding my application for leave to appeal'. He refers to the above grounds and added additional complaints summarized as follow:

(a) I did not have a fair trial as I was advised by the Public State Prosecutor to plead guilty so that I may receive a fine on all 10 counts;

(b) The judge made a mistake by finding that the learned magistrate did not exceed the jurisdiction of the magistrate's court i.e. the 3 years' imprisonment for count 1-6 and 8-10 and 5 years' imprisonment for count 7. In terms of the

Magistrate's Court Act, 1944 (Act 32 of 1944) the jurisdiction of the magistrate's court is limited to a term of imprisonment not exceeding 5 years' imprisonment; and

(c) The Judge was supposed to correct the misdirection of the magistrate who failed to take into consideration the 4 years and 7 months in custody whilst awaiting trial.

[4] He further submitted heads of Argument in which he makes the following points (summarized):

(a) The leave to appeal covers all the counts;

(b) The learned magistrate made a mistake by only applying cross-examination to count 7;

(c) The learned magistrate exceeded the jurisdiction;

(d) The Hon Justice had power to interfere with the sentence on the ground that he has been in custody for 4 years and 7 months awaiting trial;

(e) The magistrate failed to consider a suspended sentence as well as a fine;

(f) It was not his intention to plead guilty but he was forced to plead guilty by the State Prosecutor.

[5] At the hearing the court advised the appellant that he may only address the court on the errors made by this court and allowed him to address the court on the following issues which were dealt with on appeal:

(a) The learned magistrate exceeded the jurisdiction;

(b) The Hon Justice had power to interfere with the sentence on the ground that he has been in custody for 4 years and 7 months awaiting trial;

(c) The failure of the court to interfere with the sentence imposed by the learned magistrate.

[6] Having heard the appellant on these grounds the court dismissed the appeal on the ground that there are no reasonable prospects of success on appeal. The statutory provisions determining the Magistrate's Court's jurisdiction is clear. (Also

see S S Terblanche *Guide to Sentencing in South Africa* 2 ed p 14, paragraph 6.2.3). No interference with the sentence was warranted and the dismissal of the appeal was proper.

[7] In the result the following order is made:

The application for leave to appeal is dismissed.

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M A Tommasi  
Judge

APPERANCES:

For The Applicant:

Mr lipinge

In person

Elizabeth Nepembe Correctional Facility

For The Respondent:

Mr Shileka

Office of the Prosecutor General, Oshakati