

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION

HELD AT OSHAKATI

LEAVE TO APPEAL RULING

Case Title: <i>The state v Precious Monde Kolofu</i>	HC-NLD-CRI-APP-SLA-2019/00078
	Division of Court: Northern Local Division
Heard before: Honorable Lady Justice Salionga	Heard on: 11 June 2020 Delivered on: 23 June 2020
Neutral citation: <i>S v Kolofu</i> (HC-NLD-CRI-APP-SLA-2019/00078) [2020] NAHCNLD 74 (23 June 2020)	
IT IS ORDERED THAT: 1. The application for leave to appeal by the State in terms of s 310 (1) read with 310 (4) of the Criminal Procedure Act 51 of 1977 is granted;	
Reasons for the above order:	
SALIONGA J :	
[1] Applicant has shown that the Court a quo did not apply its mind properly in refusing	

a postponement where the state required 15 minutes to prepare to close their case and address the court and proceed to eventually discharge the Respondent.

[2] Suffice to the remarks made by the trial court during proceedings, the decision to refuse a postponement was premature and unreasonable. See *S v Acherson* 1991 NR 1 at para C-G for considerations to be taken into account.

[3] The Court a quo was selective in its analysis of evidence presented and applied a wrong test in discharging the respondent on all charges.

[4] *S v Teek* 2009 1 NR 127 SC page para 8 as authority for the test to be applied in exercising the discretion to discharge.

[5] For the aforesaid reasons this court without considering the merits of the case, is of the view that there is reasonable prospects of success on appeal and another court may arrive at a different conclusion.

[6] In the result:

1. The application for leave to appeal by the State in terms of s 310 (1) read with 310 (4) of the Criminal Procedure Act 51 of 1977 is granted;

Judge(s) signature	Comments:
Salionga J:	None
Counsel	
Applicant	Respondent
Mr L Matota Office of the Prosecutor –General (Oshakati)	Ms M Amupolo Amupolo & Co. Inc. (Ongwediva)