

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION, OSHAKATI

APPEAL JUDGMENT

Case Title: <i>The State v Nangolo Trofimus</i>	Case No: HC-NLD-CRI-APP-CAL-2019/00096
	Division of Court: Northern Local Division
Heard before: Honourable Mr. Justice January J <i>et</i> Honourable Ms. Justice Salionga J	Heard on: 11 June 2020 Delivered on: 25 June 2020
Neutral citation: <i>S v Trofimus</i> (HC-NLD-CRI-APP-CAL-2019/00096) [2020] NAHCNLD 75 (25 June 2020)	
The order: <ol style="list-style-type: none">1. Condonation is granted.2. The conviction of contravening section 16(1), read with sections 1, 16(1)(a),6(2) and 33 of the Tobacco Products Control Act, Act 1 of 2010 is confirmed;3. The sentence of 18 months imprisonment is set aside;4. The appellant is sentenced to 7 months imprisonment;5. The sentence is antedated to 05 November 2019;6. The officer in charge at Oluno Correctional Facility is directed to immediately effect the release of the appellant.	

Reasons for the order	
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JANUARY J (SALIONGA J concurring):	
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[1] The appellant was charged with contravening section 16(1) read with sections 1, 16(1) (a),	
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6(2) and 33 of Act 1 of 2010-Dealing in illicit tobacco products to the value of N\$2000.	
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[2] He was represented by Ms Shailemo, pleaded guilty to the charge and was convicted.	
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[3] He was sentenced to 18 months imprisonment without the option of a fine.	
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[4] The appellant filed his notice appeal late with an application of condonation and supporting	
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affidavit. The respondent, represented by Ms Nghiyoonanye did not oppose the application.	
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She conceded that the appellant has prospects of success on appeal as the sentence is startlingly inappropriate and induces a sense of shock. Ms Nghiyoonanye further conceded that	
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a fine would have been appropriate considering the personal circumstances of the appellant.	
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[5] The appellant is a first offender at the age of 37 years old. He pleaded guilty as a sign of remorse. He lives with an 80 year old mother and has 7 children. Four of the children attend school and the appellant is responsible for their maintenance. He is unemployed but generates	
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income from odd jobs.	
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[6] I agree with the concession that the sentence is inappropriate and that a fine would have	
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been appropriate. In my considered view, the magistrate overemphasized the seriousness of the offence. The appellant however already served slightly more than 7 months imprisonment. Imposing a fine at this stage would, in my view be prejudicial to the appellant. Hence the order above.	
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Judge(s) signature	Comments:
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January J	None
Saliona J	None
Counsel:	
For Appellant Ms Shailemo Of Shailemo & Associates	For Respondent Ms Nghiyoonanye Of Office of the Prosecutor-General