

REPUBLIC OF NAMIBIA



**HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION
HELD AT OSHAKATI**

BAIL APPEAL JUDGMENT

Case No: HC-NLD-CRI-APP-CAL-2020/00039

In the matter between:

KENNEDY MUTUMBULWA

APPELLANT

v

THE STATE

RESPONDENT

Neutral citation: *Mutumbulwa v S* (HC-NLD-CRI-APP-CAL-2020/00039) [2020]
NAHCNLD 87 (20 July 2020)

Coram: DIERGAARDT AJ

Heard: 16 - 17 July 2020

Delivered: 20 July 2020

Flynote: Criminal procedure – Notice of appeal – Bail refused in court *a quo* – Such notice should set out clearly and specifically grounds on which appeal is brought – there

is no valid notice of appeal before the court for the court to consider - Appeal struck from the roll.

Summary: Appellant lodged an appeal with this court against the decision of Magistrate Shilemba when she refused him bail on 29 July 2019. The Appellant is facing one count of Rape in contravention of Combating of Rape Act, No 8 of 2000. The respondent raised a point *in limine* that there were no clear and specific grounds set out in the notice of appeal as required by rule 67(1) of the Magistrates court Rules.

The court held, that there were no grounds of appeal and that the appeal is struck from the roll.

ORDER

1. The point *in limine* raised by the respondent is upheld.
 2. The appeal is struck from the roll.
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JUDGMENT

DIERGAARDT AJ:

[1] Mr Mutumbulwa lodge an appeal with this court on 22 June 2020 after Magistrate Shilemba at Eehana Magistrates court refused him bail on 29 July 2019. The Appellant is facing one count of Rape in contravention of Combating of Rape Act, No 8 of 2000 the said Magistrates court.

[2] The appellant is acting in person while Ms Ms Nghiyoonanye acts on behalf of the respondent.

[3] The Appellant was given an opportunity to address the court in an attempt to amplify his notice of appeal. The appellant raised a few new facts of which the court

pointed out to the appellant. The court made it clear that the appellant ought to show an irregularity or wrong doing by the court a quo during his bail hearing.

[4] Despite the courts direction, the appellant went further to re-iterate his personal circumstances as listed in his notice of appeal and other new matters. The appellant feels strongly that his personal circumstances were not given full weight by the Magistrate.

[5] At the inception of this appeal Ms Nghiyoonanye raised a point *in limine* that there were no clear and specific grounds of appeal set out in the notice of appeal as required by rule 67(1) of the Magistrates Court Rules.

[6] Ms Nghiyoonanye submitted that an improper ground of appeal is no ground of appeal and thus a nullity. She further submitted that, the appellant's notice of appeal did not clearly and specifically set out the grounds of appeal, but instead merely restated what he testified about in the court a quo.

[7] In the case of *Tjiriange v State* (CA 86/2016) [2016] NAHCMD 390 (17 January 2017), the court stated that:

'The court is alive to the fact that the appellant is acting in person and that the notice of appeal filed by him should thus be construed generously in the light most favorable to the appellant.¹ However, the court cannot take this proposition 'too far, as to cover... situations where a peremptory statutory provision has not been complied with'.² Rule 67(1) of the Magistrates Court Rules provides that:

(1) A convicted person desiring to appeal under section 103 (1) of the Act, shall within 14 days after the date of conviction, sentence or order in question, lodge with the clerk of the court a notice of appeal in writing in which he shall set out clearly and specifically the grounds, whether of fact or law or both fact and law, on which the appeal is based [my emphasis]. . . .'

[8] There is no other way to interpret Rule 67(1) of the Rules of the Magistrates Court other than it being a peremptory requirement. The purpose of a ground of appeal is to 'apprise all interested parties as fully as possible of what is in issue and to bind the

¹*Boois v State* (CA 76/2014) [2015] NAHCMD 131 (8 June 2015) at para. 2.

² *Boois v State* (CA 76/2014) [2015] NAHCMD 131 (8 June 2015) at para. 4.

parties to those issues'.³ The notice of appeal in this case is merely a restatement of appellant's personal circumstances which the court a quo had regard to at the initial bail hearing. This restatement of personal circumstances does not constitute a ground of appeal as the respondent rightfully submitted.

[9] Ms Nghiyoonanye listed numerous authorities with regards the merits of this case, the court app lauds her effort. The court is satisfied that there exists no appeal before it, upholding the ruling in the case of *Tjiriange v State* and thus no merits to consider.

[10] In the result, I make the following order:

1. The point *in limine* raised by the respondent is upheld.
2. The appeal is struck from the roll.

A Diergaardt
Acting Judge

³ *S v Gey van Pittius & Another* 1990 NR 35 at 36H. See also, *Boois v State* (CA 76/2014) [2015] NAHCMD 131 (8 June 2015) at para. 5.

APPEARANCES:

APPELLANT:

Mr K Mutumbulwa, in person
Eehana Police Station, Eehana

RESPONDENT:

Ms M Nghiyoonanye
Office of the Prosecutor General, Oshakati