

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI  
LEAVE TO APPEAL JUDGEMENT

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| <b>Case Title:</b><br><i>The State v Janete Johannes</i>   | <b>Case No:</b><br>HC-NLD-CRI-APP-SLA-2021/00043     |
| <b>Heard before:</b><br>Honourable Lady Justice Salionga J   | <b>Division of Court:</b><br>Northern Local Division |
|  | <b>Delivered on:</b><br>10 June 2022                 |
| <b>Neutral citation:</b> <i>S v Johannes</i> (HC-NLD-CRI-APP-SLA-2021/00043) [2022] NAHCNLD 60 (10 June 2022)  |  |
| <b>The order:</b><br>The application for leave to appeal against the discharge in terms of section 174 of the Criminal Procedure Act, 51 of 1977 is granted.   |  |
| <b>Reasons for decision:</b>   |  |
| SALIONGA J:<br><br>[1] This is an application for leave to appeal by the State in terms of s 310 (2) (a) of the Criminal Procedure Act 51 of 1977, as amended (the CPA) in which the State seeks leave to appeal against the section 174 (CPA) discharge of the respondent. The respondent was arraigned in the district court of Oshakati on a charge of contravening section 2 (b) read with sections 1, 2 (i) and/or 2 (iv), 7, 8, 10, 14 and part of the schedule of Act 41 of 1971 as amended: possession of dependence producing |  |

substance.

[2] I am satisfied that the notice of application for leave to appeal was filed within the prescribed period. Also that the notice for leave to appeal was correctly served on the respondent within the prescribed period. The respondent's failure to file a written statement in terms of s310 (4) of the (CPA) upon receipt of the notice of set down as well as after being given another opportunity to do so by this court on 10 May 2022 warranted the hearing of this matter unchallenged or unopposed.

[3] The grounds upon which the State appealed are that the magistrate failed to afford them an opportunity to be heard before she discharged the respondent and that there was sufficient evidence led upon which a reasonable court acting carefully may convict because cannabis was found on the respondent after she had brought it to Oshakati Police Station. Apart from the magistrate's remark that 'at the close of the state's case, the court finds there is not sufficient evidence led upon which a reasonable court may convict' there is no reasoned judgement by the magistrate to indicate how she came to that conclusion. In her reasons, upon the notice of application for leave to appeal being served upon her, she did not also provide any further reasons.

[4] The State (applicant) called one witness to testify in the trial against the respondent (accused). After realising that a second witness was not available, the State closed its case where after the magistrate, without affording the State an opportunity to address the court on the strength of their case, *mero motu* found the respondent not guilty and discharged her in terms of s174 of the CPA.

[5] The respondent had pleaded not guilty to the charge. In her plea explanation she informed the court that she was only given some items in order to give them to someone else. The only witness who testified was a cell manager at the police holding cells. According to him, the respondent came at the police station to give items to an inmate and upon searching through the items he found 8 plastics containing cannabis in the soap and respondent was arrested.

[6] Considering the above I am satisfied that the applicant has shown that there are reasonable prospects of success on appeal in that another court may come to a different conclusion than the trial court regarding the discharge of the respondent.

[7] In the result, it is ordered:

The application for leave to appeal against the discharge in terms of section 174 of the Criminal Procedure Act, 51 of 1977 is granted.

**Judge's signature**

**Note to the parties:**

**Appearances:**

Applicant

Respondent

Mr. L. Matota  
Office of the Prosecutor-General, Oshakati

Ms. Janete Johannes (In person)