



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CA 21/2012

In the matter between:

CHUKWUJEKWU NWOYE OKAFORUDEJI**APPELLANT**

and

THE STATE**RESPONDENT**

Neutral citation: *Okaforudeji v State* (CA 21/2012) [2012] NAHCMD 21 (1 October 2012)

Coram: MILLER AJ and PARKER AJ

Heard: 1 October 2012

Delivered: 1 October 2012

Flynote: Criminal procedure – Appeal – Application for leave to appeal against sentence only – What according to the authorities the applicant must satisfy the court in order to succeed – In such cases the court's reasons for convicting or imposing a particular sentence at first instance or dismissing the appeal may be in the relevant judgment but that may not be so where application for leave to appeal is granted.

Summary: Appeal – Application for leave to appeal against sentence only – In order to succeed applicant must indicate clearly reasonable prospects of success – In the instant case reasons for dismissing appeal fully and adequately set out in the judgment – Relevant grounds in application for leave to appeal do not add any

weight at all to the grounds of appeal which the court rejected when it dismissed the appeal – Court holding that applicant has failed to indicate clearly reasonable prospects of success on further appeal – Accordingly, court dismissing application for leave to appeal.

ORDER

The application for leave to appeal is dismissed.

JUDGMENT

PARKER AJ (MILLER AJ concurring):

[1] This is an application for leave to appeal and the applicant appears in person. In such application for the applicant to succeed he or she must satisfy the court that he or she has reasonable prospects of success on appeal (*S v Nowaseb* 2007 (2) NR 640). It has also been said that in considering such application the trial judge or appellate judge (as in the present case) must disabuse his or her mind of the fact that he or she has no reasonable doubt as to the guilt of the accused (*S v Nowaseb*) or that the sentence imposed is appropriate. Thus, in the instant case I must disabuse my mind of the fact that I have no reasonable doubt that the sentence imposed by the court below is reasonable and the sentence is not found to be shockingly inappropriate.

[2] It must be remembered – and this is crucial – that Mr Namandje who appeared for the appellant (applicant in the instant proceeding) did not then pursue any argument based on misdirection on the part of the learned regional court magistrate, as is mentioned in the 30 July 2012 judgment where the appeal was dismissed.

[3] In the 30 July 2012 judgment this court gave a fully-reasoned judgment when it dismissed the applicant's appeal against sentence. (See *S v Nowaseb* at 642B-C, relying on *S v Sikosana* 1980 (4) SA 559 (A).) It is my view that it would serve no real purpose to relate particular passages of that judgment, one by one, to the

written grounds of the present application and what the applicant added from the witness box. It is sufficient to mention that each and every relevant ground relied on by the appellant in the appeal was dealt with adequately and fully by this court. The grounds set out by the applicant in the instant proceeding do not add any weight – none at all. There is no relevant ground that is raised in the present application for leave to appeal that was not considered and determined in the 30 July 2012 judgment.

[4] I have given thorough objective consideration to the application, and having disabused my mind, as far as humanly possible, of the fact that this court has no reasonable doubt that the sentence imposed by the lower court, I find that that sentence is reasonable and adequate: it is not excessive and so it does not induce a sense of shock in my mind. Indeed, I am clearly of the opinion that, as we said in the 30 July 2012 judgment, any other punishment, for example, a fine (as submitted by the applicant's counsel in the appeal hearing) would not be an adequate punishment capable of achieving the sentencing objective of a case of this nature, as set out in para 7 of the 30 July 2012 judgment (See also *Harry de Klerk v The State SA 18/2002* (unreported).) And we agree with Ms Husselmann, for the respondent, that the applicant has no reasonable prospects of success on appeal.

[5] For these reasons, I hold that the applicant has failed to indicate reasonable prospects of success on further appeal. Accordingly, the application for leave to appeal is dismissed.

C Parker
Acting Judge

P J Miller
Acting Judge

APPEARANCES

APPELLANT: In Person.

RESPONDENT: I Husselmann
Of Office of the Prosecutor-General, Windhoek.