REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

Case no: HC-MD-CRI-APP-CAL-2018/00077

In the matter between

KOMOBUMBI MBERIRUA **FIRST APPELLANT**

UETUESAPI TJIROVI **SECOND APPELLANT**

and

THE STATE **RESPONDENT**

Neutral citation: *Mberirua v State* (HC-MD-CRI-APP-CAL-2018/00077) [2019] NAHCMD166 (24 May 2019)

Coram: LIEBENBERG J *et* MILLER AJ

Heard: **17 May 2019**

Delivered: **24 May 2019**

Flynote: Appellants charged for possession of pangolin in contravention of Controlled Wildlife Act, No. 9 of 2008 – Appellants pleaded guilty in terms of section 112(2) Act No. 51 of 1977 – Appellants admitted to all elements of offence and convicted and sentenced to 24 months' imprisonment of which 12 months' imprisonment was suspended for 5 years – The Court found that no misdirection was committed by the trial magistrate –The sentencing is not shockingly inappropriate – Appeal dismissed.

Summary: The appellants were charged for possession of pangolin and they pleaded guilty to the offence. They admitted to all the elements of the offence and were subsequently found guilty as such and were convicted and sentenced to 24 months'

of which 12 months' imprisonment were suspended on the usual conditions. The appellants appealed against their sentence.

Held, that the magistrate did not misdirect himself as with regards to sentencing.

Held, further that, the sentence is not shockingly inappropriate.

ORDER

The appeal is dismissed.

JUDGMENT

MILLER, AJ (Concurring LIEBENBERG, J)

[1] The appellants were charged in the Magistrate's Court for possession of a live pangolin in contravention of section 9(1) of the Controlled Wildlife Act, No. 9 of 2008.

[2] The appellant pleaded guilty and in a statement in terms of section 112(2) of Act No. 51 of 1977, they admitted all the elements of the charge. They were thereupon convicted on the charge. There is no appeal against the conviction.

[3] What is before us is an appeal against the sentence imposed by the learned Magistrate. The sentence imposed was one of 24 months' imprisonment of which 12 months' imprisonment were suspended for 5 years on appropriate conditions.

[4] Mr. Appollus who appeared for the appellants readily and correctly conceded that the powers of a court of appeal to interfere with sentence imposed by the court *a quo* are limited. Sitting as a court of appeal we will not interfere with sentence imposed, unless it appears that the learned Magistrate materially misdirected himself on the facts or the applicable, law or that the sentence imposed is so severe that it will induce a sense of shock.

[5] Mr. Appollus submitted that the learned Magistrate misdirected himself by placing undue emphasis on the seriousness of the offence at the expense of the mitigating circumstances. He submitted that a wholly suspended sentence would have been appropriate in the circumstances.

[6] A perusal of the Magistrate's reasoning in determining what an appropriate sentence should be, does not bear out the submission that, in doing so, he misdirected himself in any manner. The learned Magistrate correctly took into account that the offence is a serious one. He took into account the need to impose a sentence that is deterrent in nature. Against those considerations the learned Magistrate took into account the personal circumstances of the appellant and he was alive to the fact that punishment, must be blended with a measure of mercy according to the circumstances of the case.

[7] Having done so, it was concluded by the learned Magistrate that the sentence imposed was in the circumstances appropriate.

[8] There is nothing to indicate that in doing so, a material irregularity occurred.

[9] I remain unpersuaded that the sentence imposed is so severe that it can be termed as one which is shockingly inappropriate, given the facts of the case. To the contrary the sentence imposed appear to be a proper sentence.

[10] In the result, the appeal is dismissed.

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K MILLER

Acting Judge

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J C LIEBENBERG

Judge

APPEARANCES

APPELLANTS:	M Appollus Brockerhoff & Associates Legal Practitioners Windhoek
RESPONDENT:	E Marondedze Office of the Prosecutor-General, Windhoek