CASE NO.: CC 21/2010

IN THE HIGH COURT OF NAMIBIA
HELD AT OSHAKATI

In the matter between:

THE STATE

and

JOHANNES HAUFIKU NDIWAKALUNGA

CORAM: LIEBENBERG, J.

Heard on: 31 March; 11 April 2011.
Delivered on: 26 May 2011.

SENTENCE

LIEBENBERG, J.: [1] The accused appeared in this Court on charges of murder and robbery with aggravating circumstances, to which he pleaded guilty. The Court was satisfied that the accused admitted having committed the offences charged, and convicted him on his pleas of guilty. The matter was thereafter postponed to the 11th

of April 2011 for evidence in aggravation and sentence. However, on that day the Court was informed that the accused in the mean time had escaped from police custody. Accused was apprehended shortly thereafter and during his subsequent appearance the accused was represented by Ms. *Mainga*, standing in for Ms. *Nathaniel-Koch*. Ms. *Mainga* informed the Court that leave was sought to make further admissions in mitigation as the accused's erstwhile counsel allegedly failed to do so in her submissions. It was said that the accused (still) elected not to give evidence in mitigation. In addition thereto, the State also sought leave to lead evidence in aggravation. Leave was granted in respect of both applications.

[2] It seems necessary at this stage to make certain observations on the statement filed by defence counsel in mitigation. The statement is styled *"ADDITIONAL STATEMENT IN TERMS OF SECTION 112 (2) OF THE CRIMINAL PROCEDURE ACT, ACT 51 OF 1977"* and is signed by the accused. The statement contains a detailed exposition as to why the accused was upset with the deceased and what was meant when earlier submitted that the deceased made his life unbearable ("hell").

[3] When pointed out to counsel for the defence that it would be irregular to receive any "additional statement" made in terms of s 112 (2) of the Criminal Procedure Act 51 of 1977 in which the accused's plea is explained <u>after</u> he had already been convicted, Ms. *Mainga* agreed and explained that the statement was incorrectly styled; as it was meant to be a statement of the accused in mitigation and in which he sets out the circumstances that gave rise to him committing the offence. It is on that basis that the statement was received. I shall return to the content thereof later herein.

[4] In the two charges on which the accused pleaded guilty it was alleged that on the 8th day of December 2009 at Mweshipandeka Senior Secondary School, Ongwediva, the accused unlawfully and intentionally killed Gottfried Kamushisheni Ashipala and thereafter unlawfully robbed the deceased (in aggravating circumstances) from the items listed in the annexure to the indictment which, *inter alia,* included a laptop computer; cellular phone; N$2 720 in cash; a vast quantity of clothing; shoes and other personal items, all being the property of the deceased.

[5] Ms. *Nathaniel-Koch*, then appearing for the accused, handed in a statement in terms of s 112 (2) of Act 51 of 1977 in amplification of both pleas, which *verbatim* reads:

> *"… I hereby state that on the 8 December 2009, I went to the house of my teacher Gotfried Ashipala with the intention to kill him. I was upset with him because he used to threaten me that he would make my life hell. When I arrived at his house I had the panga with me and asked him for a sleeping place. He agreed to accommodate me and gave me a bed. After watching TV and taking a bath Mr. Ashipala went to bed first and I followed soon afterwards. At about three in the morning (3:00 AM) I woke up and whilst he was still asleep, and I slipped out of bed and took panga. At three thirty (3:30 AM) I started to hack him, cutting him twice in the head, whilst he was still fast asleep. He was lifting up his arms in the air and making sounds, so I took a plastic bag and put it over his head. I also held his nose shut inside the plastic bag. He was struggling a lot, almost overpowering me, I again took the panga and cut his throat. As blood was coming out of his throat, I covered the throat with plastic until he was no longer moving. I then put a pillow on his head.*

Afterwards I stole items and money and left. The items I stole are listed in the Annexure attached to my plea on Count 2." (sic)

[6] It is common cause that the accused in 2009 was eighteen years and seven months old and a pupil at Mwesipandeka Senior Secondary School when committing the offences. Although no documentary proof of the accused's age was presented to the Court, his Voter Registration Card reflects his birth date as 24 April 1991, making him twenty years of age at this stage. According to the post-mortem report death was caused by 'chopping' (sic) and it is evident from the report that the deceased had two distinct cut wounds on the head, 5 and 8cm long, respectively, causing a depressed fracture of the skull on the right temporal area and bleeding in the brain. The third wound is a lesion of the trachea (cut wound on throat) 9cm long and 3cm wide. From the photo-plan compiled by Sergeant Taukuheke of the crime scene, one is able to see the wounds inflicted to the deceased's head and throat, showing gaping wounds. The plastic bag the accused had pulled over the deceased's head is also visible and judging from the blood smears on the wall above the bed, it would appear that the deceased had put up resistance before he succumbed.

[7] Accused elected not to give evidence in mitigation and Ms. *Nathaniel-Koch,* submitting on behalf of the accused, contending that the motive behind the killing was that the deceased, a teacher at the school, earlier refused to hand over to the accused his school report for the September exams when requested, as the accused needed same to register with UNAM. He believed that the deceased was wilful, not wanting the accused to further his studies. This made the accused angry because without the report he could not enrol with UNAM. It was contended that this largely affected the

accused's reasoning. He thereafter went to the village of his grandmother with whom he had been staying, and after concluding that the only option was to kill the deceased, he returned with a panga the next day. It was furthermore explained that the accused looked up to the deceased as a father figure; hence, it was said, so much bigger his disappointment when he was refused his school report by the very same person. After committing the crimes in question he returned to his grandmother's home where he was arrested the following day. Some of the loot was recovered from his sleeping hut whilst the rest and the panga were found elsewhere hidden in the homestead.

With regard to the motive behind the killing, the Court inquired into the reason why the accused, when planning the murder, simultaneously decided to rob the deceased of his possessions, if this whole incident evolved around the exam results. The accused (through his counsel), however, was unable to advance any convincing explanation.

[8] Diverging reasons for the murder were advanced by the accused in his "additional submissions", namely, that soon after he enrolled at Mweshipandeka Senior Secondary School in 2008, the deceased started inviting him over to his room at the school hostel. Occasional visits followed and the deceased subsequently bought the accused clothes and also gave him money. In August of that year the deceased made a love proposal and they entered into a sexual relationship. Although the accused was not initially interested, he said the deceased started threatening him and made financial and other promises to him. In April 2009 the accused ended this relationship whereafter the deceased started accusing him of theft of money, which led to the accused's expulsion from the hostel. He was forced to live with his grandmother at Endola and experienced problems arriving at school in time – which

again, led to further confrontation between him and the school principal. The situation described by the accused is one where the deceased picked on him and where the school principal, despite being aware of the accused's predicament, would support the deceased instead.

[9] Regarding the school report, it was said that his class teacher, a certain Mr. Nelumbu, refused to hand him the report and referred him to the deceased – and so would the principal when approached for help by the accused. The deceased thereafter approached him saying that if they could have sexual intercourse, he would give the accused his school report and a laptop. Because he was desperate he agreed but nothing was thereafter given to him as the deceased wanted them to revive their relationship, which the accused refused. According to the accused the deceased, for reasons unknown, refused him to write the Biology paper during the year-end exams and only after the intervention of the principal, he was permitted to do so. The accused then felt that the deceased stood between him and a future and decided to eliminate him whenever the opportunity arose. When called by the deceased on 8 December 2009, saying that he had a surprise for the accused, he saw this as an opportunity to carry out his plan. When the deceased touched him whilst in bed that night, accused decided to execute his plan to "regain his independence."

The accused sees himself at this stage of his life, as psychologically confused and in need of counselling. He also regrets not having dealt with the situation differently and extends his apology to the family of the deceased for the loss and hardship he caused them.

[10] The subsequent reasons advanced by the accused's counsel in mitigation differ substantially from what his erstwhile counsel submitted and the reason for this, it was said, is because his first counsel omitted to convey this to the Court. It was also said that the accused "thought he would get the chance to narrate this to the Court himself" and that his first counsel did not follow his instructions. This statement is not supported by what earlier transpired in Court. Firstly, it was stated in no uncertain terms that the accused elected *not* to give evidence in mitigation; neither when represented by Ms. *Nathaniel-Koch*, nor when later represented by Ms. *Mainga*. Thus, on both occasions the accused declined to give evidence in mitigation and opted, through his counsel, to only make submissions. The accused is conversant in the official language and I am satisfied that he fully understood Court proceedings. Hence, had these allegations been true, the accused, in the circumstances, most likely would have brought it to the attention of the Court – which was not the case. Secondly, the latter reasons advanced, explaining the commission of the crime, are much more serious than what was initially stated. I can think of no reason why his erstwhile counsel would wittingly withhold such crucial information from the Court and why from the outset, did this not form the basis of the plea explanation; or why it was not raised in mitigation in the first place. The motive behind the killing was at first stated to be that the deceased refused to give the accused his school report; which in the second explanation, largely faded away and was substituted with the alleged pressure exerted on the accused as a result of the terminated relationship.

[11] I am not persuaded by the explanation advanced by the accused's counsel that his erstwhile legal representative is solely responsible for the contradicting versions, as this, in the absence of his former counsel, has the making of an afterthought.

Neither of these explanations was given under oath that could be tested through cross-examination; nor does it explain the accompanying robbery which the accused admittedly planned *in advance*. Although the Court cannot completely ignore the submissions made by the accused or adjudge it to be false, it should for the reasons set out in this judgment, be given little weight.

[12] Mr. *Lisulo*, appearing for the State, in view of the initial submissions made on the accused's behalf, decided to call the school principal in order to get clarity and perspective on the alleged refusal by the deceased to hand over to the accused his school report. In addition he also called the deceased's mother who testified about the financial assistance she and her family received from the deceased and the hardship brought onto her family as a result of the deceased's death.

[13] The principal at Mweshipandeka Senior Secondary School in 2009 was Mr. Kemanya. In his testimony he described the deceased as a brilliant, diligent and hard working teacher who lectured the grade 11 and 12 pupils; whose death was a loss to the school and the teaching fraternity in general. As regards the allegations that the accused's results were withheld by the deceased for no reason, Mr. Kemanya testified that it was not the school's policy to withhold results and that this would only happen if a pupil failed to return books to the school at the beginning of the year, but not in the middle of the year as they were mindful that pupils needed their results to apply for employment. He denied that it was brought to his attention that the deceased withheld the accused's results as alleged by the accused. He was aware that the accused at some stage was expelled from the school hostel; which came as a result of several incidents of theft where the accused was pointed out as the culprit by fellow

learners. This resulted in the accused having to find alternative accommodation away from school, up to the stage where it was decided to re-admit him to the hostel after the accused lodged a complaint with the local office of the Ministry of Gender Equality, who thereafter wrote a letter to the effect that the accused should be re-admitted. This was in September 2009 and according to Mr. Kemanya, one of the reasons why the accused was allowed back into the hostel, was because the academic year had almost come to an end.

[14] He further testified that the accused displayed behavioural problems at school and was part of a group of learners in one class who caused the teachers headaches; which conduct was tolerated because of their expected departure at the end of the academic year. After the accused wrote his final exams he headed for home.

[15] In cross-examination Mr. Kemanya explained that because the accused stole from others, the teachers realised that the accused had very little clothes to wear whereafter they among themselves, bought the accused school uniforms and shirts. Stealing from other learners then stopped, but soon thereafter continued and it again involved the accused. Mr. Kemanya refuted defence counsel's contention that it was only the deceased who would complain and report the accused about incidents of theft; that the accused had approached him in connection with his results; and that he refused the accused admission to school whenever he arrived late. As regards the allegation that the accused was refused to write the Biology paper, Mr. Kemanya explained that he was not at all refused to sit the exams but was merely advised that he should write the exams at a different (lower) level.

He furthermore said that the Counselling Committee of the school interviewed the accused (as a result of the problems experienced with him) and summoned his biological father to school in order to try and strengthen his relationship with the accused, but this, unfortunately, never happened. The school also engaged the accused's guardian (an uncle) to address the problems encountered with the accused at school.

[16] From Mr. Kemanya's evidence a completely different picture from the one painted by the accused emerges; one in which the accused is shown not to be as innocent as he tried to portray himself as a victim before this Court. It would appear from the evidence adduced that the material and emotional problems experienced by the accused, could have contributed to his behavioural problems at school and that any assistance provided to him in that regard did not bring about much (if any) positive change.

[17] I have given due consideration to call for a pre-sentence report prepared by a social worker, but decided against doing so for the following reasons: The accused is currently twenty years of age and the reasons advanced by him for having killed the deceased were personal in nature and had not been discussed with anyone else before, who might shed more light on the motive behind the killing. Thus, what would have been reported on by the social worker, in all probability, would have been a mere repetition of what has already been stated in Court on his behalf. The accused's personal circumstances at home were extensively dealt with by his counsel in mitigation and I am satisfied that when considered together with the evidence of Mr.

Kemanya, that there is sufficient information before the Court for purposes of sentencing.

[18] In its determination of what punishment in the circumstances of this case would *'fit the accused as well as the crime, be fair to society, and be blended with a measure of mercy according to the circumstances'*[1], the Court must have regard to the *triad* of factors referred to in *S v Zinn*[2]and *S v Tjiho*[3], namely the personal circumstances of the accused, the offence and the interests of society. In sentencing the accused in this case I shall further endeavour to strike a balance between these factors and not to over- or under emphasise any one of them. It has however been said that often it is a difficult task to balance these principles and to apply them to the facts; and the duty to harmonise and balance does not imply that equal weight must be given to the different factors, as a situation may arise where justice dictates that one factor is emphasised at the expense of the other.[4] The Court at the same time must be mindful of the objectives of punishment, namely, prevention, deterrence, rehabilitation and retribution. It is a well-established principle that in serious cases deterrence and retribution comes to the fore and that rehabilitation plays a lesser role. That would mainly depend on the particular circumstances of the case.

[19] The accused's personal circumstances, as placed before the Court from the Bar, are the following: He is currently twenty years of age and was eighteen years and seven months old when committing the offences he now stands convicted of. After losing his mother at a young age, he was raised by his maternal grandmother with

[1] *S v Rabie* 1975 (4) SA 855 (AD) at 862G
[2] 1969 (2) SA 537 (A)
[3] 1991 NR 361 (HC)
[4] *S v Van Wyk* 1993 NR 426 (HC)

whom he had been staying up to his arrest. Counsel submitted that the accused was raised in a much protected environment in which he was not required to take his own decisions; hence he was not 'exposed to life outside with its elements.' Because of that, so it was argued, he perceived the situation where the deceased refused to hand him his school report as 'making his life hell' which made him angry and act in the manner he did. Because the accused did not testify in mitigation, thereby forfeiting the opportunity to explain to the Court his emotions at the relevant time and to what extent this impacted on his decision to kill the person responsible for making his life miserable, I find it difficult, if not impossible, to exactly gauge the accused's state of mind and moral blameworthiness on the scanty information placed before the Court – this despite the diverging information placed before the Court subsequently.

[20] This notwithstanding, I find the reasons advanced on the accused's behalf, considered together with the evidence of the principal Mr. Kemanya, implausible. I am not persuaded by the argument that the protected environment in which the accused grew up, in any way, contributed to his decision to murder his teacher for refusing to hand over his exam results. Having successfully progressed up to grade twelve, I have little doubt in my mind that there must have been times when the accused experienced similar or even bigger challenges than what he has encountered in this case; and which he had to overcome without eliminating the problem by killing someone. One such incident is where he on his own volition approached the Ministry of Gender Equality for assistance after his expulsion from the school hostel.

[21] I have alluded to the allegations of sexual abuse by the deceased and the weight to be given thereto. Although these allegations are obviously more serious in nature,

there was no reason why the accused, after having finished school, returned to the home of the deceased for whatever reason and when going there, he did so by choice. By then the alleged relationship had been terminated and the accused must have realised that the deceased had no control over the results of the final external examination written by the accused. Thus, there were no longer any reasons for taking the life of the deceased.

[22] There was no explanation forthcoming as to any alternative solutions the accused considered besides killing the deceased; and what steps were taken in order to materialise such alternatives. There can be no doubt that alternative solutions were indeed available to the accused; and in the circumstances one could have expected from him to either have approached another teacher or the school principal to come to his rescue; or call upon his grandmother, the one responsible for his upbringing and whom he could trust and rely on, to assist him. He could equally have made a report about the sexual abuse to the same persons at the Ministry of Gender Equality whilst lodging his complaint. Instead, he resorted to violence and decided to brutally kill a fellow human being in the sanctity of his own home for no apparent reason.

[23] The alleged motive behind the murder cannot be viewed in isolation and regard must also be had to the accompanying robbery. The accused in his plea explanation admitted that he had already formed the intention to rob the deceased before leaving his grandmother's home; the same time when he decided to commit the murder. Thus, when he left home he had already planned the commission of both offences well in advance, and for that purpose fetched the panga from his grandmother's house in the village. This is an important factor seriously detracting from both motives

advanced by the accused for having murdered the deceased. As stated, in my opinion, the reasons advanced by the accused in mitigation, should be given little weight for purposes of sentence.

[24] From the facts, the alleged motive for the killing of the deceased appears to be nothing more than a mere afterthought. This conclusion is fortified by the fact that the accused approached the deceased earlier that day, asking for a place to sleep over for one night. It seems highly unlikely that the deceased would have offered the accused a place to sleep over in circumstances where they were not on good terms as alleged by the accused. In the light of the divergent reasons given by the accused explaining his staying over at the deceased's house that night, the Court is in doubt as to the truth concerning the circumstances under which the accused was permitted to stay over. Be that as it may, the accused under false pretences made his way into the deceased's house in order to kill and rob him.

[25] The accused is a first offender and prior to his escape, was in custody since his arrest, a period of one year and four months. These are mitigating factors weighing heavily with the Court when determining what sentence in the circumstances, would be suitable. It would appear that the accused – if he can be believed on this point – intends furthering his studies; an important factor the Court must have regard to when considering the objectives of punishment – particularly as far as it concerns reformation, as the accused is still very young, thereby increasing the prospects of reformation. Regarding the accused's intentions to further his studies, it does not mean to say that he would be unable to do so in the event of a custodial sentence being imposed, for it is well-known that prisoners desirous of studying whilst serving

their sentences, are allowed to do so and receive the necessary assistance from the prison authorities (as far as this is possible). Although this might not be readily achieved, it is not something beyond the accused's reach. The reintegration of a young offender into society would, to a certain extent, depend on the offender's academic qualification; hence the need to afford that person the opportunity to further his or her studies. Although the circumstances whilst in detention not being ideal to achieve that aim, these are factors of limited value. See: *Director of Public Prosecutions, Kwazulu-Natal.*[5]

[26] Despite the accused's young age, he made himself guilty of serious offences, particularly when regard is had to the circumstances in which these were committed. Not only did he plan the commission of the crimes well in advance, but even collected a panga from his grandmother's home in order to execute his utterly evil plan. He thereafter conned his way into the deceased's home and abused the trust and hospitality of the deceased, solely with the intention of killing him in his sleep soon thereafter. He unexpectedly at the stage when the deceased was asleep and as such vulnerable, attacked him with the panga and directed two blows to the head. Although the accused did not explain where from he got the plastic bag which he pulled over the deceased's head in order to suffocate him, he most likely brought it with him when entering the deceased's bedroom. Again, this is something that he must have planned in advance. The severe force behind the blows directed at the deceased's head can be inferred from the depressed skull fracture. The injuries inflicted did not result in immediate death and the accused thereafter pulled the plastic bag over the deceased's head; but when he encountered some resistance, he picked up the panga and struck the deceased once on the throat whereafter he died on the spot.

[5] 2006 (1) SACR 243 (SCA)

After covering the deceased's face with a pillow he proceeded collecting the deceased's possessions and then returned home. The stealing of the deceased's property was certainly not borne out by need (as the accused was cared for by his grandmother), but greed. I take into account that the stolen property was recovered – however, it is no longer of any significance to the deceased who has paid with his life for the accused's rampage.

[27] When regard is had to the age of the accused and the circumstances in which the crimes were committed, one is shocked when realising how calm and calculated the accused's actions were when committing these horrendous and barbaric crimes; add thereto the accompanying brutality thereof. This reflects adversely on the character of the accused and it seems to me that this is one of those cases where the accused, despite his young age and background, acted like an 'ordinary' criminal.[6] In *Director of Public Prosecution (supra)* at 249i-j (para [9]) the South African Supreme Court of Appeal held that the accused in that case (an eight year old girl who arranged the murder of her grandmother and in which she played an active role), *"…in spite of her age and background, acted like an 'ordinary' criminal and should have been treated as such"*.

[28] In cases like the present the Court, in sentencing, must be mindful of the youthfulness of the offender; yet, it must also be alive to the moral blameworthiness of the offender, having acted no different from the ordinary (adult) criminal when committing these heinous crimes.

---

[6] *The State v Iishuku Amunyela* (unreported) Case No. CC 01/2010; *The State v Antonius Thomas Elifas Kashidule* (unreported) Case No. CC 03/2010

[29] The sentence that needs to be imposed in a case as the present, in my view, seems to lie somewhere between those sentences ordinarily imposed on adult criminals for murder and robbery; and the more lenient sentences usually imposed on young offenders whose moral blameworthiness, as a result of their youthfulness, is considered by the courts to be substantially less. Guided by the circumstances of any particular case the court, in following this approach in sentencing, will be able to determine a sentence that sufficiently recognises the youthful age of the offender, but at the same time, reflects the seriousness of the crime and indignation of society. To this end the sentence would be well-balanced; not over- or under emphasising any of the factors relevant thereto.

[30] In the *Director of Public Prosecution* case (*supra*), it was held that even in the case of a juvenile offender, the sentence imposed must be in proportion to the gravity of the offence[7] and at 254e-f the following is said:

> *"In **Brandt**[8] and **Kwalasa**[9] the Court reiterated that proportionality in sentencing juvenile offenders was required by the Constitution. Of course, proportionality in sentencing is not meant to be done in the sense of an 'eye for an eye' as was cautioned by Harms AJA in a dissenting judgment in **S v Mafu**[10] where he noted that proportionality does not imply that punishment be equal in kind to the harm that the offender has caused."*

I respectfully endorse these sentiments.

---

[7] At p 254c-d
[8] *S v Brandt* [2005] 2 All SA 1 (SCA) at para [19]
[9] *S v Kwalasa* 2000 (2) SACR 135 (C) at139f
[10] 1992 (2) SACR 494 (A) at 497d

[31] Given the circumstances of this case, I am of the view that society expects from the Court to show its disapproval and indignation of crimes as the present through the imposition of suitable sentences. In this instance the brutal killing of a teacher who died at the hands of one of his former pupils sent shockwaves through the community. The deceased was a productive person, fulfilling an important task as educationist in the school where he lectured. Society in general depends heavily on the teaching profession to educate its children in a developing country such as Namibia and the vacuum left by a single qualified teacher would not only be felt by those who had been working directly with the deceased in this instance, but also by the wider teaching fraternity. At the same time it would generally be in the interest of society that a message should go out to its younger members that they are equally required to respect the law and the rights of others and will be held accountable for their misdeeds.

[32] When regard is had to the objectives of punishment the young age of the accused on the one hand remains a crucial factor; whilst on the other side is the seriousness of both offences which equally must be given sufficient weight in sentencing. Although I realise that the accused is still young and the prospects of rehabilitation being good, I cannot ignore the fact that a brutal and senseless murder was committed. Mindful of the rule that children should as far possible not be sent to prison, I am furthermore of the view that the present circumstances are exceptional and that the accused cannot escape a custodial sentence as the aggravating circumstances outweig his personal circumstances by far.

[33] I am furthermore mindful of the accused having pleaded guilty and expressed remorse – albeit through his counsel. It is often said that in order for remorse to be a valid consideration in sentencing, it must be genuine and the accused has to take the court fully into his confidence by giving evidence. Unless this is done, the court would not be in a position to determine the genuineness of the alleged contrition. A plea of guilty in itself should not be seen as a sign of remorse and as such as a mitigating factor unless accompanied by genuine and demonstrable expression of contrition by the accused. The reason for this is that in an instance where the accused has no viable defence, the mere fact that he then pleads guilty in the hope of being able to gain some advantage from his plea, should not receive much weight in mitigation.[11] In this case the accused did not take the Court into his confidence by personally expressing any remorse, and in my view, little weight should be given to the submissions made from the Bar on his behalf in this regard.

[34] Whereas both crimes were committed at the same time and the murder and subsequent robbery as to motive being directly connected, the Court will make appropriate orders to avoid the possibility of the accused being punished twice on the same facts, generally referred to as 'double jeopardy'. Regard will also be had to the period the accused had spent in custody awaiting trial, as the Court is enjoined to do.

[35] In the premises, I am convinced that in the circumstances of this case, the following sentence is appropriate:

Count 1: Murder – Twenty (20) years' imprisonment, three (3) years' of

[11] *S v Landau* 2000(2) SACR 673 (WLD) at 678b-d

which suspended for five (5) years on condition that the accused is not convicted of the offences of murder or culpable homicide involving an assault, committed during the period of suspension.

Count 2: Robbery (with aggravating circumstances) – Ten (10) years' imprisonment.

In terms of s 280 (2) of Act 51 of 1977 it is ordered that half the sentence imposed in count 2 must be served concurrently with the sentence imposed in count 1.

It is further ordered that a copy of this judgment be sent to the Head of Prison where the accused will serve sentence and same to be handed to the social worker of that institution with the view of counselling being provided for the accused.

_____

LIEBENBERG, J

ON BEHALF OF THE ACCUSED	**Ms. R. Nathaniel-Koch**
Instructed by:	**Directorate: Legal Aid**
ON BEHALF OF THE STATE	**Mr. D. Lisulo**
Instructed by:	**Office of the Prosecutor-General**