

REPUBLIC OF NAMIBIA

REPORTABLE



IN THE HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

SENTENCE

Case No: CC 23/2008

In the matter between:

**THE STATE**

and

**NATANGWE IPINGE NGATJIZEKO**

**ACCUSED**

**Neutral citation:** *State v Ngatjizeko* (CC 23/2008) [2013] NAHCMD 167 (18 June 2013)

**Coram:** NDAUENDAPO, J

**Heard:** 18 April 2013

**Delivered:** 18 June 2013

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**Flynote:** Criminal law — Sentence — Diminished criminal responsibility — Lack of remorse — Son of the deceased — Aggravating

**Summary:** The accused was convicted of murder with *dolus directus* — Court found that he acted with diminished criminal responsibility which is a mitigating factor. The murder was premeditated; the accused has not shown any remorse first offender and spent 6½ years in custody. The accused is the biological son of the deceased and that is aggravating. Sentenced to 40 years imprisonment.

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### ORDER

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1. The accused is sentenced to a term of imprisonment of 40 years on count one
2. One month imprisonment on count two. It is ordered that the sentence in count two will run concurrently with the sentence in count 1.

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### JUDGMENT

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**NDAUENDAPO J** [1] This court convicted the accused of murder with *dolus directus* read with part 1 and part 3 of Act 4 of 2003. He was acquitted on robbery with aggravating circumstances but, found guilty of theft of N\$20.

[2] According to the summary of substantial facts the accused, who was born on 10 July 1979, is the biological son of the deceased. The latter resided at Erf number 7463, Shandumbala in Katutura in the district of Windhoek.

On an unknown date prior to Sunday 17 December 2006 the accused travelled from Walvis Bay to Windhoek with the intention to kill the deceased. On 17 December 2006 and at the residence of the deceased the accused boiled water and poured it over the

body of the deceased and he fractured some of her ribs. He also stabbed her several times with at least two knives. The deceased died on the scene due to the injuries sustained. Before he left the scene the accused took N\$20.00 cash money which was the property of or in the lawful possession of the deceased.'

[3] It is now my duty to sentence the accused for the crimes he committed. In terms of our law there are three factors to be taken into account, namely:

- (a) The personal circumstances;
- (b) The nature of the crimes; and
- (c) The interest of society.

(See: S v Zinn 1969 (2) SA 537 (A) AT 540G)

[4] At the same time the sentence to be imposed must satisfy the objectives of punishment which are:

- (i) The prevention of crime;
- (ii) Deterrence or discouragement of the offender from re offending and would be offender;
- (iii) Rehabilitation of the offender;
- (iv) Retribution — thus, if the crime is viewed by society with abhorrence, the sentence should also reflect this abhorrence.

In S v Rabie 1975 (4) SA 855 at 862 G-H the Court held that:

*"Punishment should fit the criminal as well as the crime, be fair to society and be blended with a measure of mercy according to the circumstances"*

**[5] PERSONAL CIRCUMSTANCES**

The accused is 33 years old and his father is a Minister of Safety and Security. His parents were not married. The deceased went into exile in 1980 when the accused was one year old. He stayed in Kwanzazul refugee camp in Angola. The deceased left him in the camp and went to India.

In September 1990 the accused returned to Namibia at the age of 11 years old. He was found by his sister, at a place in Oshakati who brought him to Windhoek where he met the deceased in December 1990. He could not live with the deceased. He stayed with his father and visited the deceased from time to time.

The accused attended grades 6 and 7 at the People's Primary School in Katutura. He was then sent to Martin Luther high School in Omaruru where he completed grades 8, 9 and 10. In 1997 he returned to Windhoek and attended Concordia College where he completed grades 11 and 12.

In 1999 he enrolled at the University of Namibia for a Bsc degree. He abandoned his studies in the second year. The deceased then found a scholarship for him and he went to the Czech Republic to study economics. He failed his first year due to the language problems. In March 2002, he returned to Namibia. He started smoking cannabis and drinking heavily.

In 2003 he enrolled at the Polytechnic of Namibia where he studied media and broadcasting. He did not write exams in that field and he changed to electrical engineering. Three months later he abandoned his studies due to drinking and smoking. In 2004 he joined the Namibian Defence Force and whilst in the force he was arrested for possession of cannabis. In October 2004 the accused absconded and left for Zimbabwe, for no apparent reason, without a passport and entered the country illegally. He was caught stealing and was jailed for 11 months. In September 2005 he was deported back to Namibia. He continued with his drinking and smoking habits and he got more and more attracted to cannabis. He was unemployed and started stealing to

maintain his drug habit. He stole cell phones from his father, sold them bought a bus ticket to Cape Town. In Cape Town settled in Philippi Resettlement, where a large number of rastafarians reside. He got arrested for trespassing and on immigration charges. He was deported back to Namibia in 2006. Back in Namibia he continued drinking heavily and abusing drugs, and was staying at his aunt's house as he feared for the deceased. He started believing that the deceased was be-witching him, that she could read his mind and causing him problems. He stole some items from his aunt's house and he was kicked out of the house and moved to Walvis Bay. He returned to Windhoek seven days before the he killed the deceased. He has no children and he has been in custody for 6½ years. According to his counsel the accused is rehabilitated and has converted to Islam.

#### [6] **Nature of the crime**

There is no doubt that murder is a serious crime which calls for severe punishment. The deceased suffered 2<sup>nd</sup> and 3<sup>rd</sup> degree burn wounds and according to the doctor, the water had to boil more 100 celsius in order to cause such injuries.

She was stabbed 39 times and also sustained defence wounds on the fingers in both hands. She suffered ribs fracture, liver, kidney and lung ruptures. She died in the most gruel manner imaginable. As she was being stabbed, she cried for help from the neighbour and the accused, as counsel for the state put it: 'had the audacity to step on her face with his feet to make sure she was dead'. She was a defenseless and innocent human being who died at the hands of her own son. The conduct of the accused was truly diabolic and unforgivable. The sheer savagery of this crime boggles the mind.

The sentence to be imposed must fit the true nature and seriousness of the crime. Every person's right to life is entrenched in our Constitution. You deprived the deceased, somebody who had a special place for you in her heart, of her enjoyment to life.

[7] The accused was the blue eye boy of the deceased. His parents tried their level best to ensure that he got educated. They sent him to some of the best schools in the country. They enrolled him at Unam, Polytechnic, and the Namibian Defence force. His father testified that he is “baffled” by the actions of the accused. Before she died, the deceased told him that the accused was obedient and she had a special place for him in her heart. What turned an obedient and very intelligent young man into a murderer of his own mother remains a mystery.

[8] The murder was clearly premeditated. The accused in his confession stated that when he arrived from Walvisbay two weeks before the killing he had the intention to kill the deceased. He brought a knife along for the sole purpose of killing the deceased with. He boiled a pot full water on the stove and after the water boiled, he took the boiling water, walked towards the unsuspecting deceased who was sitting in the sitting room and poured it on her. He then took out a knife from his pocket and stabbed the deceased several times, mostly on the chest and the neck, the most vunerable part of the body. He continued stabbing her and only stopped after he injured himself in the hands. When deceased who was lying on the floor screamed for help from the neighbor the accused step with his feet on her face and she went silent-dead.

### **Interest of society**

[9] The brutality of this crime evoked huge public outcry and condemnation and in my view justifiably so. Violence against women, the most vulnerable member of our society, continues unabated. The courts are trying their level best to impose severe sentences to send a clear message that murderers will be dealt with severely. High levels of crime invariably result in the public demanding that ever more sever sentences be imposed on perpetrators of these crimes.

In *S v Motolo en andre* 1998 (1) SACR 206 OPD the court held that:

*“In case like the present the interest of society is a factor which plays a material role and which requires serious consideration. Our country at present suffers an unprecedented, uncontrolled and unacceptable wave of violence, murder, homicide, robbery and rape. A blatant and flagrant want of respect for the life and property of fellow human beings has become prevalent. The vocabulary of our courts to describe the barbaric and repulsive conduct of such unscrupulous criminals is being exhausted. The community craves the assistance of the courts, its members threaten, inter alia, to take the law into their own hands. The courts impose severe sentences, but the momentum of violence continues unabated. A Court must be thoroughly aware of its responsibility to the community and by acting steadfastly, impartially and fearlessly announce to the world in unambiguous terms its utter repugnance and contempt of such conduct.”*

### **Submissions by counsel for the state:**

[10] She submitted that despite the heinousness of the crime the accused has not shown any remorse for the killing of his own mother, despite his claim that he is rehabilitated and has converted to Islam. He has not tender any apology and he has shown a high level of arrogance and given the defence he proffered the accused was imbued with the responsibility of taking the court in his confidence and tell the court what had happened. He failed to do that.

She further submitted that not much weight should be attached to the fact that the accused was suffering from diminished criminal responsibility because the accused did not testify and the court does not have evidence from the accused to weigh that up with the psychiatric reports.

### **Submission by counsel for the accused**

Counsel for the accused submitted that the evidence by the psychiatrist that the accused was suffering from diminished criminal responsibility was presented by expert witnesses called by the state and that evidence remains unchallenged and the court is duty bound to take that into account.

[11] The court has taken into account the personal circumstances of the accused and that at the time he committed the offence he suffered from diminished responsibility.

The abuse of cannabis and alcohol clearly played a role in the actions of the accused. Dr Mtoko testified that the accused suffered from diminished criminal responsibility when he committed the offence, but he knew that he was killing his mother. In determining the precise weight to be attached to the accused defence of diminished criminal responsibility it is revealing to consider the remarks of Nugent JA in *Director of Public Prosecutors, Transvaal v Venter* 2009 (1) SACR 165 (SCA)

*At para 65 where he said 'diminished criminal responsibility is not a pathological condition but 'a state of mind varying in degree that might be brought about by a variety of circumstance [such as] the effects of alcohol and drugs, jealousy, distress, provocation...[which ] have always been matters to be taken account of in mitigation and concludes that nothing is altered when these circumstance are brought together under a label'.*

The accused is a first offender and the court takes into account that has spent over 6 years in prison.

The accused has not shown any remorse. More than six years have passed since he committed the gruesome murder and he has not expressed any remorse whatsoever. That is aggravating in my view.

[12] The accused is the son of the deceased and in terms of the Domestic violence Act 4 of 2003 that is a aggravating and what Smuts AJ (as he then was) said In *S v Bothile* 2007 NR 1 137 Smut AJ is apposite — he said the following:



*“The prevalence of domestic violence and the compelling interest of society to combat it, evidenced by the recent legislation to the effect, required that domestic violence should be regarded as an aggravating factor when it came to imposing punishment. Sentences imposed in this context, whilst taking into account the personal circumstances of the accused and the crime, should also take into account the important need of society to root out the evil of domestic violence and violence against women. In doing so, these sentences should reflect the determination of courts in Namibia to give effect to and protect the constitutional values of the inviolability of human dignity and equality between men and women. The clear and unequivocal message which should resonate from the courts in Namibia was that crimes involving domestic violence would not be tolerated and that sentences would be appropriately severe.*”

In the result, after taking into account all the relevant factors I consider the following sentence to be appropriate.

1. The accused is sentenced to a term of imprisonment of 40 years on count one
2. One month imprisonment on count two. It is ordered that the sentence in count two will run concurrently with the sentence in count one.

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**G N NDAUENDAPO  
JUDGE**

**APPEARANCES**

**THE STATE:**

**Ms Moyo  
Of Office Of Prosecutor General**

**ACCUSED:**

**Mr Wessels  
Instructed by Legal Aid**