

**REPUBLIC OF NAMIBIA**



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK**

Case No.: CC 13/2012

**THE STATE**

versus

**TOBIAS NAMWEYA**

**Neutral citation:**

*S v Namweya* (CC 13/2012) [2013] NAHCMD 341(18 November 2013)

**Coram:** SHIVUTE, J

**Heard:** 14 November 2013

**Delivered:** 18 November 2013

**Fly note:** Criminal Procedure – Sentence – Murder – Accused first offender – Aggravating factor – Offence premeditated – Interest of society outweighing personal circumstances of accused – Society expecting long term imprisonment – Court justified to impose lengthy sentence.

**Summary: Criminal Procedure – Sentence – Murder – The accused who is a first offender killed the deceased by stabbing her 7 times with a knife. The aggravating factor is that the offence was premeditated – The interest of society has outweighed the personal interest of the accused – Society expects Court to impose long term of imprisonment – Court justified in imposing a lengthy sentence.**

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**SENTENCE**

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1<sup>st</sup> Count: Murder with direct intent: 30 years imprisonment.

2<sup>nd</sup> Count: Assault with intent to do grievous bodily harm read with the provisions of the Combating of Domestic Violence Act 4 of 2003: 2 years' imprisonment.

3<sup>rd</sup> Count: Assault with intent to do grievous bodily harm: 2 years' imprisonment.

It is ordered that the sentence on the 3<sup>rd</sup> count is to run concurrently with the sentence on the 2<sup>nd</sup> count.

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**SENTENCE**

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**SHIVUTE J:**

[1] The accused has been convicted on one count of murder with direct intent and two counts of assault with intent to do grievous bodily harm. One of the assault counts is read with the provisions of the Combating of Domestic Violence Act 4 of 2003.

[2] The State was represented by Mr Eixab while Mr Mbaeva appeared on behalf of the accused on the instructions of the Directorate of Legal Aid.

[3] The three convictions referred to above are a sequel to incidents that took place on 9 September and 20 September 2009.

[4] The accused gave evidence in mitigation where he dealt with his personal circumstances as follows:

He is [...]2 years of age, single but has a son whose age he gave as [.....] years old and yet the accused stated that the son was born in 1994. He claimed that the son's mother died in 1998. Since the death of the child's mother, the child was staying with his paternal grandmother until 2009 when she also died. From 2009 the child has been staying with her maternal family. The accused is a first offender who was arrested on 20 September 2009. He was admitted to bail until 27 November 2010 when his bail was cancelled because he failed to appear before court and he has been in custody since then. Before the accused's incarceration, he was working and he used to maintain his son by buying essential commodities and paying for his school fees. At the moment he does not know whether his son is still attending school or not. Apart from helping his son, he was also maintaining one of his siblings who is now 60 years old and his siblings' children. The accused has seven siblings, six sisters and a brother. He testified that he felt bad because the deceased had died. However, he qualified his statement in cross-examination by saying he was feeling bad because he was being tried for the offences he did not commit, including the killing of the deceased. The accused stated that he suffers from high blood pressure and also experiences some pain because of the injuries he sustained in a car accident some years back.

[5] Counsel for the State argued that the accused was convicted of serious offences which are prevalent. The deceased was killed in a gruesome manner. She was stabbed with a knife seven times. The deceased had children and a husband and these children were deprived of their mother. The deceased was killed because she tried to assist Ms Tobias who was in an abusive relationship. As far as the two counts of assault with intent to do grievous bodily harm are concerned, the accused

has been stalking the two victims. He assaulted them on 9 September 2009 and threatened to kill them. The accused has a tendency of violence and has no respect for the law. Therefore, so counsel contended, the Court should impose a lengthy term of imprisonment as there is little hope for him to be rehabilitated. Concerning the accused's version that he maintained his son counsel argued that it is highly unlikely that the accused was involved in the upbringing of his son since he does not even know his son's age. As for the accused's illness, counsel submitted that the accused is receiving treatment already whilst in custody. He suggested that the court should impose a custodial sentence of 40 years in respect of the first count and 2 years' imprisonment in respect of each count of assault with intent to do grievous bodily harm. He further submitted that the sentence to be imposed in respect of the third count should run concurrently with the sentence to be imposed on the second count.

[6] Counsel for the accused on the other hand, argued that the court should take into account the three years the accused spent in custody.

[7] In considering what an appropriate sentence should be, I will consider a triad of factors namely: The offender; the crime and the interest of society. At the same time, regard must also be had to the objectives of punishment which are prevention, deterrence, rehabilitation and retribution. Although the court must endeavour to strike a balance between these factors, the circumstances of a case might dictate that one or more of the factors must be emphasised at the expense of the others.

*S v Van Wyk* 1993 NR 426 at 448.

[8] Although the accused is a first offender who has spent three years in custody awaiting his trial, factors which are in his favour, he did not show any remorse whatsoever. As already noted, the accused testified that he was supporting his son including his other members of his family. It may well be that his family has to suffer due to the accused's actions. This unfortunately is a consequence of crime and if this were to happen, the accused has himself entirely to blame.

[9] As far as the nature of the crimes the accused has committed, they are undoubtedly serious and prevalent in this country. It is an aggravating factor that the deceased's death was premeditated. The accused carefully planned to kill the deceased by arming himself with a lethal weapon, hid it under his jacket and walked to the deceased's house. He told her that he was going to kill her and executed his intention by viciously attacking the deceased and inflicted 7 stab wounds on her body for no apparent reason. This all happened when the deceased and her friend had met to celebrate the deceased's birthday. The accused is undoubtedly a heartless man who has shown scant regard for human life. He went around [.....] Park subjecting the two innocent women to terror and intimidation. He succeeded to carry out the threat to murder the deceased.

[10] Although the accused testified that he suffers from high blood pressure and also experiences some pain, at the same time he told the court that he is receiving medical attention whilst in custody. Therefore, not much weight should be attached to this circumstance. The court can also take judicial notice of the fact that inmates are provided with medical care and treated for their ailments whilst in prison. I have weighed the personal interest of the accused in relation with the interest of society. I find that the interest of accused is by far outweighed by the interest of society. Society expects offenders like the accused who abuse women and have no regard for human life to be removed from society for a long time as they pose a clear danger to it.

[11] In the result, the accused is sentenced as follows:

1<sup>st</sup> Count: Murder with direct intent: 30 years imprisonment.

2<sup>nd</sup> Count: Assault with intent to do grievous bodily harm read with the provisions of the Combating of Domestic Violence Act 4 of 2003: 2 years' imprisonment.

3<sup>rd</sup> Count: Assault with intent to do grievous bodily harm: 2 years' imprisonment.

It is ordered that the sentence on the 3<sup>rd</sup> count is to run concurrently with the sentence on the 2<sup>nd</sup> count.

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N N Shivute  
Judge

APPEARANCES

STATE : Mr Eixab  
Office of the Prosecutor-General

ACCUSED: Mr Mbaeva  
Instructed by Directorate of Legal Aid