

**REPUBLIC OF NAMIBIA**



**NOT REPORTABLE**

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

**CASE NO: CC 4/2014**

In the matter between:

**THE STATE**

**versus**

**TROUGOTH NANUB**

**ACCUSED**

**Neutral citation:** *State v Nanub* (CC 4/2014) [2016] NAHCMD 1 (12 January 2017)

**CORAM:** SIBOLEKA J

**Heard on:** 27, 28, 29, 30 July 2015; 17, 18, 19, 20, 21 August 2015;  
14, 15, 17 March 2016; 23 May 2016; 22, 29 August 2016;  
6, 26, 27 September 2016; 25, 26, 27 October 2016; 6, 7  
December 2016;

**Delivered: on: 12 January 2017**

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**Flynote:** Criminal law: The accused started beating up his ex-girlfriend. She broke loose and ran away, but the accused pursued, caught up with her and stabbed her three times as a result of which she died – guilty of murder dolus directus.

**Summary:** Prior to her death, the deceased and the accused were in an actual or perceived intimate or romantic relationship and had separated. On the day of the incident she and her current boyfriend were walking to her mother's residence when the accused called her in the riverbed. She went to him and he then started beating her. She ran away to avoid further assault, but the accused pursued, caught her, and stabbed her two times on the neck and once on the chest area.

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## **VERDICT**

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In the result the accused is convicted as follows:

Guilty – Murder – dolus directus read with Act 4 of 2003.

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SIBOLEKA J

[1] The accused is facing the following count of the indictment:

**Murder, read with Act 4 of 2003**

In that upon or about 9 October 2012 and at or near Omaruru in the district of Omaruru the accused did unlawfully and intentionally kill Cheroline Dausas, an adult female person.

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**SUMMARY OF SUBSTANTIAL FACTS IN TERMS OF SECTION 144(3)(a) OF THE CRIMINAL PROCEDURE ACT, 51 OF 1977**

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At some time prior to the death of the deceased she and the accused were involved in a domestic relationship in that they had an actual or perceived intimate or romantic relationship.

During the evening of Tuesday 9 October 2012 at Okombahe in Omaruru the deceased and her boyfriend were walking to the deceased's mother's residence when the accused called the deceased and she went to him. The accused started to beat the deceased who then ran away from him. The accused pursued the deceased and stabbed her several times with a knife in the neck and chest where after the accused ran away to his father's house. The deceased was rushed to a nearby clinic but died due to injuries sustained as a result of the stabbing.

[2] The accused pleaded not guilty and did not furnish any plea explanation. He admitted that he was in a domestic relationship with the deceased up to the time of her death on 9 October 2012.

[3] The prosecution witnesses:

[4] Sam Goamub testified he is a police officer, working as a Unit Commander, Forensic Pathology Unit, Walvis Bay. His duties entail collecting corpses and assisting doctors during post mortem examinations. On 14 October 2012 he was on duty when W/O Naiteke brought a deceased female from Okombahe. This witness received the body which was identified to him as that of

Cheroline Dausas. He placed it in the mortuary freezer. On 19 October 2012 he assisted Dr. Sergie Strojev who performed the post mortem examination on the deceased.

[4.1] Dr. Sergie Strojev testified he is a medical doctor. He confirmed the evidence of the police officer Sam Goamub who assisted him during the post mortem examination. According to the doctor, the cause of death of the late Cheroline Dausas were stab wounds on both the left and right side of her neck, and a lung penetrating stab wound on the right of her chest. The deceased lost a lot of blood through bleeding.

[5] Simon Nghiteeka is a police officer. He testified that he was the investigation officer at the time of the incident stationed at Omatjete Police Station. He and W/O Tjombe went to the Clinic where the deceased was taken for medical assistance after the assault. At the clinic the two sisters Aletha and Kachas showed him the body of the deceased. He observed stab wounds on the neck and chest, ie on top of the breast. The nurses identified the deceased to him as Cheroline Dausas. He went back to the Charge Office and explained to the accused in the English language that he understood that he had the right to remain silent, not answering any questions put to him. If he elected to answer and explain what happened the same will be written down and may latter be used against him in a Court of Law; that he also had the right to legal representation at his own cost. If he cannot afford that, he can apply for State funded legal aid counsel. The accused said he understood the explanation he elected to take the officer to his father's residence to show them where he hid the knife.

[5.1] Nghiteeka opened a murder case against the accused, went back to the clinic and took the body of the deceased to the mortuary at Omaruru State Hospital. During the transportation the corpse did not sustain further body injuries. On 14 October 2012 he transported the body of the deceased to Walvis

Bay hospital for a post mortem and handed it to Sam Gaomub. No further body injuries were sustained to the corpse during the transportation. After the post mortem he transported the body back to Omaruru. Later on he received the post mortem report which is now before court.

[6] Martin Winslow Kambindu testified he is a police officer, stationed at Omatjite. He travelled together with Simon Nghiteeka to Okombahe to attend to this matter and he accordingly corroborated his evidence.

[7] Charlotte Khachus testified that she is a nurse by profession and was stationed at Okombahe Clinic in October 2012 as an enrolled nurse for seven years. On the evening of the day of the incident, she travelled on an ambulance with patients from Okombahe to Omaruru. She was busy giving a report to a nurse there when two young men brought in a lady. They held her underneath both her arms/shoulders. The young men brought her in up to the door and left. The lady who later died and is the deceased on this matter, walked, came and stood next to her said: "Sister help me because I was stabbed by Striker ..." Striker is the other name of the accused before court. When another nurse Aletha Gaeses asked her who Striker was, the deceased replied that 'it was her ex-boyfriend'.

[7.1] Khachus noticed that as the deceased spoke to her, sound and blood was coming out from the hole (stab wound) on the lower part of her throat. She ran and brought some material to close the said lower part of her throat to stop air coming out from a stab wound. This did not help, the deceased had to be placed on the oxygen machine. This witness asked the deceased to sit on the chair, because there was already another patient on the bed. While seated, the deceased started bleeding from the mouth and was about to fall on her side, but Sister Gaes came to her assistance. Khachus rushed to get a drip and a stand, but she was already gasping and she died right in the chair. Khachus knew the deceased very well, her residence was near the clinic, and she used to bring her

children to the clinic for medical attention. That was how she came to know her. Milk was coming out from the wound on her breast and Khachus realized that she was still breast feeding. There were wounds on both the left and right side of her neck. The throat was cut where the sound of wind was coming out. Police were telephonically contacted and they later came along with the suspect. Charlotte Khachus's evidence is corroborated by her supervisor, registered nurse Aletha Priscilla Gaes, who was also on duty on the day of the incident.

[8] Martin Tjombe testified he is a police officer, working as a Station Commander of Okombahe during the time of the incident. The deceased came at the Station asking for assistance from the police that day. She told the officer that her name was 'Funa' and that she forgot her photo at the house of her ex-boyfriend's father. The deceased and her ex-boyfriend were residing at that house at the time they were still together. Tjombe was alone at the station. He was also new in the area, he did not know the people as well as where they resided. He called Const. Gurirab whom he found at the station to come and help the lady. That same day in the evening at 20h00 an ambulance driver came at his residence asking help that they should attend a knife stabbing incident. The officer relayed the incident to the Unit Commander of C.I.D. in Omaruru and W/O Nghiteeka was dispatched from there to assist with the investigations. Tjombe then called his members Bede, Ngurere, Oshimbuli and others.

[8.1] Tjombe and his officers boarded the ambulance and were taken to the local Clinic where they found two nurses Aletha Gaes and Khachus. These nurses showed them a lady who was stabbed in the neck and on the breast. The deceased's current boyfriend was also there. The nurses declared the deceased dead and told the officers that according to what she related to them it was her ex-boyfriend by the name of 'Striker' who stabbed her. The officers boarded the ambulance and drove to the residence of Striker's father. They knocked and he came out with his father. His stepmother was also there. On arrival Tjombe introduced himself and his colleagues to him. He told the accused in the

Damara>Nama language about the stabbing incident involving a lady for which they were looking for him. He warned him as follows: That he had the right to remain silent, and if he elected to tell them what happened the same would be written down and used as evidence against him in Court. That he had the right to engage his own counsel at own cost and that if he was not able to afford that, he may apply for a Legal Aid funded counsel. He also asked the accused whether he understood the explanation, and he said 'yes'.

[8.2] The accused told Tjombe, he was in fact waiting for the police. Tjombe handcuffed the accused, took him into his room, on his request, lit his cell torch and took his jacket and a face towel. Tjombe and the accused boarded the ambulance with other police officers. He sat in front with the driver. They drove back to the Clinic, where he asked the ambulance driver to park in the darkness away so that the public could not see the accused. This was done while they waited for a police vehicle from Omatjite. From here the accused was dropped at the police station. The deceased's current boyfriend took them to the scene of crime and explained to the officers what happened. After the incident, Tjombe and W/O Nghiteeka drove to the accused's residence (at his father's house), and got the photo whereon the deceased was standing with another lady and a small child. The accused's father got the photo from the room the accused was using before his arrest on this matter.

[9] Lazarus Nikanor Nangombe testified that at the time of the incident he was residing and working for one year and a half at Dibasen School. Cheroline Dausas also known as 'Funa' was her girlfriend. When he knocked off from work on the day of the incident, he went to his mother-in-law's residence. He was treated to supper. His mother-in-law wanted to send children to buy a candle, but the deceased and this witness offered to buy one and bring it at home. While they were walking back to his in-laws' residence, they came to the riverbed where he heard someone calling the deceased 'Funa', 'Funa'. She gave him the candle she was carrying and walked to the caller. Nangombe did not go there. It

was dark, he could not see the caller. He stood there waiting for the deceased to come back. He was only able to see the white knitted woolen jersey the caller was wearing, covering his ears. The caller started beating her. While the beating was in progress, Nangombe heard the deceased telling her assailant in Damara language "... I am not anymore with you, I left you already, I got another boyfriend why are you beating me up".

[9.1] Nangombe testified that he understands and speaks Damara language very fluently. He did Damara up to Grade 10 in school. He asked the assailant "... why are you beating the girl", but there was no answer. The deceased ran away and he saw the accused chasing after her with a knife, till he caught up with her. The accused was holding the deceased by the jacket/blazer that she had on with his left hand, and in the right hand he held a knife stabbing her. In the end Nangombe could not see how the deceased's jacket got off from her, whether she undressed it herself during the assault, or the accused undressed her. All that Nangombe later observed was that the blazer was in the accused's hands. During the assault the deceased was screaming "...help me ... help me".

[9.2] Nangombe saw the blade of the knife shining as the accused raised the hand in which he held the knife stabbing the deceased. He picked up stones and threw at the accused, but missed. Later he saw the accused running away in the riverbed. The deceased had in the meantime fallen down. He asked the deceased what was going on and she told him "...I was stabbed by Stryker". Striker is the other name of the accused, which he confirmed while giving his evidence in chief. Epedi arrived there and with Nangombe, they assisted the deceased and took her to the clinic. They left her there. Nangombe went to his in-laws' residence and told the deceased's mother what had happened. The deceased was still breastfeeding. Nangombe and the deceased's mother took the deceased's two children to the hospital to find out how the deceased was being treated, but on arrival she was already dead.



[9.3] Nangombe stated it was his first time to see a person being stabbed, he was afraid such that he did not move around in the night. The police fetched him the following morning and he visited the scene with them. He showed them the shoe of the deceased as well as her jacket. These were photo taken. He also showed the police the various places where the accused and the deceased were scuffling; where the deceased was asking the accused to leave her alone, and where she was stabbed. The blood spots were clearly visible.

[9.4] During cross-examination Nangombe testified that at the time of the incident the deceased was his girlfriend and they both stayed at the residence of the deceased's mother.

[10] Lucia Nanus testified she is the biological mother of the accused, who is the first born of her five children. She testified that Stefanus Nanub is her grandfather. The grandfather is also the christian father or godfather of the accused. She stated that Phillipus Dausab is the biological father of the accused. She denied that she ever told him that Stefanus Nanub was his father.

[11] Phillipus Dausab testified that he is the biological father of the accused. He is the one who nicknamed him 'Striker'. When he received the report of the incident on 09 October 2012, he asked the accused whether it was true that he stabbed the girl. The accused replied: "... she swore at my mother" and he did not explain further. The accused was wearing a white knitted hat covering his ears. This corroborates Lazarus Nangombe regarding how the accused was dressed at the time he assaulted the deceased.

[12] Christian Nanub testified that he was brought up by Stefanus Nanub, the biological father of the accused's mother. Stefanus Nanub is also the biological father of this witness's biological father. He stated that the accused and the deceased sometimes stayed at his farm. At the time he was on his farm he told him that his father is Phillipus 'Tessy' Dausab.

[12.1] On the day of the incident the accused asked permission from Christian Nanub to attend the funeral of one of his father's daughters from where he will proceed to his father's residence, and it was granted. Phillipus Dausab corroborated this evidence by testifying that the accused was indeed at his place at the time he assaulted the deceased.

[13] Lee John Ngurare testified that at the time of the incident he was stationed at Okombahe, Omaruru. When the incident came to their knowledge, himself, Sgt. Tjombe, Constables Gurirab and Bede went to the clinic where the nurses showed the deceased to them. They were informed it was the deceased's former boyfriend who stabbed her. Ngurare knew that the accused was working close to the school but he was not there. They went to his residence where they found him. They arrested him and when asked about the knife he used, he started sending them from pole to pillar, and eventually nothing was found.

[14] Trougoth Nanub is the accused on this matter. He testified under oath denying all the allegations preferred against him by the prosecution. He even denied the evidence of his own biological parents, namely his mother and father, to the fact that Phillipus Dausab is his biological father. Also denied is the fact that Lazarus Nangombe was the boyfriend of the deceased at the time of the incident. The accused testified that he was the boyfriend of the deceased at all times up to the date of the incident and he does not know who stabbed her to death. The police only arrested him for something he did not know. His evidence was very untruthful, especially if regard is had to when he testified and recorded his own biological father to be only his stepfather.

[15] From the whole evidence placed before court on this matter, it is crystal clear that on the day of the incident in the evening, the deceased and her boyfriend Lazarus Nangombe, offered to go to the shop to buy a candle for the deceased's mother, Lisema Dausas, which she confirmed in her evidence. As

they left the shop on their way back home, the accused called the deceased in the riverbed, and she went to him. Lazarus Nangombe stood apart waiting for her to return. To his surprise he only saw the accused beating the deceased till she started to run away, to avoid further beating.

[15.1] The accused chased after the deceased, he caught up with her and fatally stabbed her on the left and right side of the neck and on her breast as a result of which she died at the Clinic before the nurses could even attend to her. I am satisfied that when the deceased told the nurses it was 'Striker' her ex-boyfriend who stabbed her, she in fact referred to the accused before court. There is numerous corroboration from witnesses such as the two nurses at Okombahe Clinic; the accused's biological father and the deceased's boyfriend Lazarus Nangombe who saw him chasing the deceased, and stabbing her. Nangombe's description about how the accused covered his ears has also been corroborated by the accused's father, Phillipus Dausab.

[16] Counsel for the prosecution submitted and referred to authorities in support of his contention that he has proved beyond reasonable doubt that it was the accused who stabbed his ex-girlfriend to death on 09 October 2012. The counsel requested the court to convict the accused as charged.

[17] Counsel for the accused submitted and described as insufficient the prosecution's evidence which relies on the following evidence, namely exhibit 'D'; Lazarus Nangombe; and the dying declarations of the deceased.

Exhibit 'D' relates to the pointing out of the scene of crime the accused did to D/Inspector likuyu. In his evidence in chief, likuyu said he only discovered while standing in the witness stand that the accused did not sign the pointing out of the scene of crime he made before him on this matter. This point clearly shows that the officer did not do his work properly and it was on that basis that his evidence fell out of context on this matter.

[17.1] The accused's counsel's submission that Nangombe's evidence must be disregarded because of contradictions is in my view misplaced. The counsel's argument cannot be allowed to stand when regard is had to the corroboration the accused's biological father Filipus Dausab, made on Nangombe's description of the material the accused used to cover his ears at the time he was stabbing his ex-girlfriend on the day of the incident.

[17.2] The counsel's argument that the deceased's statement to the nurses should be disqualified as a dying declaration because it was extracted from her also fails, because the question as to who 'Striker' was, followed an unsolicited statement by the deceased to the nurse Charlotte Khachus, that she should help her because 'Striker' has stabbed her. It is my considered view that the question was legitimate to clarify and shade more light regarding what she was telling the nurses.

The counsel further stated that the non-finding of the murder weapon (the knife) eroded on the credibility of the evidence of prosecutions' witnesses. This in my view is not the case in view of the direction of the whole body of evidence pointing at the accused as the person who stabbed his ex-girlfriend to death.

[18] The deceased made the following statements before she died:

She related to his boyfriend Lazarus Nangombe regarding her assault when she was asked: "What was going on ... and she told him" ... I was stabbed by Striker", (the accused before court).

Immediately after the accused had stabbed the deceased with a knife, her boyfriend and Epedi Hange assisted her side by side up to the Clinic in Okombahe. She walked up to the nurse and out of her own said:

"Sister help me because I was stabbed by Striker ..." When another nurse Aletha Gaes asked her who Striker was, the deceased replied that "... it was her ex-boyfriend".

[18.1] The above statements comply with the requirements of a dying declaration as stated by this court per Van Niekerk J, as she then was in the matter of *Petrus Cornelius Jordaan and Willem Marthinus Snyman and another*<sup>1</sup> delivered on 23 October 2008, quoted the well known work of Schwikkard and Van Der Merwe Principles of Evidence, 2<sup>nd</sup> ed at p267 and stated the conditions for admissibility of a dying declaration to be the following:

- “(a) The declarant must have died.
- (b) The statement must have been made against the pecuniary or proprietary interest of the declarant at the time of making.
- (c) The declarant must have known that the statement was against his interest.”

[19] I am therefore satisfied that it is the accused who stabbed the deceased, his ex-girlfriend and that this has been proved by the prosecution witnesses beyond reasonable doubt.

[20] I have come to the conclusion that at the time the accused caught up with the deceased and inflicted the stab wounds on the sensitive neck and chest areas, he directly intended to kill her which has in fact happened.

[21] In the result the accused is convicted as follows:

Guilty – Murder – dolus directus read with Act 4 of 2003.

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<sup>1</sup> Case No. (P) 11624/2005  
Petrus Cornelius Jordaan v Willem Marthinus Snyman and another delivered on 23 October 2008.

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A M SIBOLEKA

Judge

APPEARANCES:

STATE : Mr. J. T. Kuutondokwa  
Office of the Prosecutor-General, Windhoek

ACCUSED : Mr. M. Engelbrecht  
Instructed by Directorate of Legal Aid