

**REPUBLIC OF NAMIBIA**



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK  
LEAVE TO APPEAL JUDGMENT**

**CASE NO: CC 29/2012**

In the matter between:

**ELIAKIM NAMPINDI  
and  
THE STATE**

**APPLICANT  
  
RESPONDENT**

**Neutral citation:** *Nampindi v S* (CC 29/2012) [2017] NAHCMD 349 (05 December 2017)

**Coram:** SIBOLEKA J  
**Heard on:** 21 November 2017  
**Delivered on:** 05 December 2017

**Flynote:** Criminal law: Application for leave to appeal – generally requires presence of reasonable prospects of success on appeal – such not apparent on this matter in view of the brutal manner in which the two deceased and the victim on the third count of attempted murder were savagely stabbed with a knife. Despite the severity of the offences the court nonetheless still ordered the co-accurrent running of sentences in the first and third counts respectively – the application is dismissed.

**Summary:** First count, deceased stabbed to death after refusing the applicant to Join in the drinking of tombo. Second count – the deceased, the applicant’s lover had her stomach slit across open such that her intestines and bowels came out. Third count – the victim was bending down to prepare fire when the applicant stabbed him in the back. The dirt that collected in the victim’s body due to internal bleeding had to be drained with a pipe. The victim was also operated upon to clean the inside. He spent some time in hospital.

Held: Sentence of twenty years on the first count of murder; thirty five years on the second count of domestic violence related murder; eight years on attempted murder: Count one and three were ordered to run concurrently.

Held: The sentence is appropriate.

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**ORDER**

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In the result I make the following order:

The application for leave to appeal is dismissed.

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**LEAVE TO APPEAL JUDGMENT**

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SIBOLEKA J

[1] The applicant was convicted and sentenced as follows by this court on 21 July 2016:

Count 1: Murder dolus directus: Twenty years imprisonment

Count 2: Murder dolus directus, read with the provisions of the Combating of Domestic Violence Act 4 of 2003: Thirty five years imprisonment

Count 3: Attempted murder: Eight years imprisonment

It was ordered that the sentence imposed on the accused (applicant) in count three run concurrently with the sentence imposed on him in the first count.

[2] The applicant was fifty two years old when he murdered the victim in the first count. He was sixty four years of age when he murdered the second victim and seriously injured the third victim on the third count.

[3] The applicant is unrepresented and his grounds of appeal are as follows:

"1. The Honourable Judge erred in the law and/or on the facts in failing to strike a balance between the seriousness of the offence and society's interest to demand that Courts impose harsh sentences upon perpetrators making themselves guilty of serious offences.

2 The Honourable Judge erred in the law and/or on the facts in failing to apply the cumulative effect of sentences:

Grounds 1 and 2:

A balance was struck between the seriousness of the offences the applicant was convicted on and the interests of society hence the concurrent running order of sentences. The cumulative effect of the sentences was accordingly taken care of as well.

3. The Honourable Judge erred in the law and/or on the facts in totally ignoring the age of the Appellant who is already 66 years old.

4. The Honourable Judge erred in the law and/or on the facts in failing to impose a life imprisonment sentence on all counts.

5. The Honourable Judge erred in the law and/or on the facts in imposing a sentence which is bound to take the Applicant to the point of being broken down.

6. The Honourable Judge erred in the law and/or on the facts in imposing a sentence which, in the premises is totally inappropriate, in that it is shockingly severe".

Grounds 3, 4, 5 and 6:

This court is generally not bound to impose a life sentence on a murder convictee. Each case is considered on its own merits. The extent of brutality in

which these crimes were committed; the fact that the applicant was already on bail pending his trial and was fifty two years old when he committed the first murder, he was sixty four years old when he committed the second murder. All these factors did not allow the imposition of a life imprisonment. The sentence that was imposed by this court was not aimed to break up the applicant and neither is it shocking. The seriousness of the crime, the revulsion in which society views the none abating scourge of murders on defenceless women all found expression in it.

[4] Counsel for the respondent raised a point in limine at the beginning of the hearing of the appeal to the fact that the applicant was sentenced on 21 July 2016 and only filed his leave to appeal on 13 September 2016. He was seven weeks and two days out of time. He was therefore required to give reasons for his late filing of the notice of appeal, which he did not do. This application deserves to fail on this point alone. However, for the sake of completeness the court directed that the matter be argued on merit by the parties.

[5] On the day of the incident, 5 March 2009, the deceased on the first count, Paul Fredericks was drinking tombo with Maria Kooper in the latter's house. The applicant, a cattle herd boy at the time was refused to join them and was told to go out. He showed compliance, opened the door and went out, only to re-enter again holding a big black handled knife that he used for slaughtering and skinning cattle and donkeys. He grabbed the deceased by the collar with his left hand and firmly held him against the wall. He then proceeded to stab him several times such that he died en route to the hospital in Mariental.

[6] After the above murder incident, the applicant was granted bail on 20 January 2010 during which he committed the second crime of murder and attempted murder on the third count respectively on 03 – 04 April 2011.

[7] The applicant and the deceased on the second count were involved in a romantic relationship. On the day of the incident, the applicant grabbed and

throttled her with his left hand. While so doing, he then proceeded to stab her twice on the left upper chest with the knife he had in his right hand. He then stabbed the deceased on the left side of her abdomen. He did not pull the knife out, he instead pulled it across her stomach from the left to the right, slitting her abdomen open such that her intestines and the bowels came out. The deceased died en route to hospital at Mariental.

[8] On the third count of attempted murder the incident took place while the victim, Salmon Rooinasie was bending down making the fire. The applicant stabbed him once in the back, the victim jumped up and luckily dodged the second blow. He was taken to Schlip Clinic and from there to Rehoboth Hospital. From here he was taken to Katutura State Hospital where he spent one week. Later he was taken to Windhoek Central Hospital where he spent one month and two weeks. A pipe was inserted in a hole on the left side of his armpit to drain the dirt caused by internal bleeding. This was followed by an operation to clean the inside.

[9] As stated in my judgment on sentence, I find it appropriate to again briefly reflect on the applicant's previous record: On 18 March 1983 he was sentenced to three years for Culpable Homicide. On 05 August 1997 he was sentenced to 16 years for Murder, three years were suspended for five years on the usual conditions of good behavior. At the time of sentencing the applicant on the punishment he is currently serving; his last sentence was seventeen years and ten months old and could not be held against him. However, the remarks of Gibson J, as she then was are worth reflecting. The Judge made the remarks in an unreported High Court Case No. CC 98/97 delivered on 05 August 1997 at page 3 paragraph 10:

"In this case you of all people should have known better because you have been previously jailed and served a prison sentence for an offence of the unlawful killing of another human being. Although that event occurred a long time ago in 1983 one cannot ignore it, because it shears that you have a tendency of an ungovernable temper. With

that history behind you, you should have known better and controlled your anger because you should have realized that giving vent to one's feelings in that manner leads to unpleasant consequences and results. The consequences may have been unpleasant to you, but were devastating to your victim because he is now no longer."

[10] Despite the seriousness, and none abating domestic violence against the vulnerable women in our society; the short space of time between the first and second crimes of murder; the fact that the applicant was on bail at the time he committed the second murder; the brutality he wielded in the execution of these crimes; this court still ordered the concurrent running of sentences imposed in the first and third counts respectively in order to mitigate the cumulative effect thereof.

[11] According to counsel for the respondent's arguments and authorities she cited, taking into account the above circumstances in which the crimes were committed, she prayed that the application for leave to appeal should fail.

[12] In view of all the above observations I hold the view that the applicant was appropriately sentenced and has no prospect of success on appeal.

[13] In the result the application for leave to appeal is dismissed.

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A M SIBOLEKA

Judge

APPEARANCES:

APPLICANT: In person

Windhoek Correctional Facility, Windhoek

RESPONDENT: Ms. E. N. Ndlovu

Office of the Prosecutor-General, Windhoek