

**REPUBLIC OF NAMIBIA**



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

Case No: CC 10/2017

**THE STATE**

v

**EDMUND ELVIS NANUB**

**ACCUSED**

**Neutral citation:** *S v Nanub* (CC 10/2017) [2018] NAHCMD 296 (21 September 2018)

**Coram:** USIKU, J

**Heard:** 20 August 2018

**Delivered:** 21 September 2018

**Flynote:** Criminal Procedure – Sentence – Murder with direct intent – Robbery with aggravating circumstances - Offences committed in a domestic setting – The brutality in which they were committed considered – as well as their prevalence with regard to the offences of murder – Legitimate interests of society outweighs interest of the accused – Court's consistency in imposing long custodial sentences preferred.

**Summary:** The accused stood charged with the crimes of murder read with the provisions of the Combating of Domestic Violence Act 4 of 2003 and robbery with aggravating circumstances as defined in section 1 of the Criminal Procedure Act 51 of 1977 as amended. On 11 September 2013, the accused unlawfully and intentionally killed the deceased whom he was previously romantically involved with, whereafter he unlawfully stole a gas stove valued at N\$ 350.00 from the same premises, the property belonging to one, Norman Arnold.

He pleaded not guilty to both counts, whereafter the State led evidence and the Court subsequently convicted him as charged on both counts.

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### **ORDER**

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First Count: Life Imprisonment.

Second Count: 8 years imprisonment.

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### **SENTENCE**

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USIKU J:

[1] The accused stood charged with the crimes of murder read with the provisions of the Combating of Domestic Violence Act 4 of 2003 and robbery with aggravating circumstances as defined in section 1 of the Criminal Procedure Act 51 of 1977 as amended. The offences were committed on 11 September 2013. It was alleged that the accused unlawfully and intentionally killed the deceased whom he was previously romantically involved with, whereafter he unlawfully stole a gas stove valued at N\$ 350.00 from the same premises, the property in the lawful possession Norman Arnold.

[2] Accused pleaded not guilty to both counts, whereafter the State led evidence and the Court subsequently convicted the accused as charged on both counts.

[3] In deciding what an appropriate sentence would be, the Courts must take into account the following factors, namely, the accused's personal circumstances, the offences committed as well as the interest of society.

#### Accused's personal circumstances

[4] In mitigation, accused testified that he is 35 years of age and single. He is a father to one minor female child whose age he is not sure of. The child's mother is the deceased in this case. Prior to the deceased's passing, he supported the child with his salary earned from his employment at Okapuka Lodge. He gave about N\$ 400.00 towards the child's maintenance. Today, he does not know for certain with whom the child is staying. He further testified that he also maintained both his elderly parents before incarceration. He would buy them food and deposit money into their respective accounts.

[5] He did not attend the deceased's funeral as he was in custody, neither did he speak to the deceased's family. When asked about how he felt about having caused deceased's death, he had nothing to say at all. Accused throughout his testimony maintained that he did not kill the deceased and therefore has nothing to apologise about. It is for this reason he made no attempt whatsoever to contact the deceased's family.

[6] Accused further testified that he loved the deceased very much throughout their seven years relationship. The deceased also loved him. After the deceased moved away from him, he was not aware that she had moved in with another man.

[7] With regard to the evidence in aggravation, the deceased's mother testified that she is currently aged 49 years old. The deceased was the first born of her six children.

The deceased was a mother to an 11 year old boy and a girl of age 8. The girl was fathered by the accused person. The children are currently living with her on a farm. Before the deceased' death, the girl stayed with her until she was 2 years old whereafter she went to stay with her grandmother. The boy all along lived with the grandmother. She further testified that the deceased was the breadwinner of their household. She was employed as a domestic worker and with her earnings she maintained them. The witness further testified that she is married and her husband has a medical condition that requires constant medication. The deceased was responsible for his medical bills. The witness vehemently denied accused ever having supported their child.

[8] The death of the deceased hurt the family so much and the fact that to date accused has completely failed to show any remorse hurts even more.

#### The offence

[9] In submission, Mr Moyo, counsel for the State, argued that the accused was convicted of murder with *dolus directus* which is a very serious offence. The sanctity of life must be protected and respected at all times. Thus Article 6 of the Constitution of Namibia provides that 'the right to life shall be respected and protected. No law may prescribe death as a competent sentence. No Court or Tribunal shall have the power to impose a sentence of death upon any person. No executions shall take place in Namibia.

[10] The manner in which the deceased was killed was very brutal in that she was almost beheaded, her throat was slit and she was also struck with a huge brick on her head. It was indeed a painful death. Furthermore the post mortem report highlighted that the deceased had bruises and abrasions to the neck which means a lot of pressure was applied. She had bleeding on her brain caused by the brick with which she was struck. At the time of her death, she was 25 years of age and in an early stage of pregnancy. Surely the acts committed against her could not have come from a person

who claims to have loved her. The motive of the killing was merely because she had left him for another man.

[11] Whereas circumstances of each case may differ, the courts have the duty to fairly sentence offenders. Furthermore, society requires that people should be punished for their evil deeds committed against society.<sup>1</sup> The crimes committed especially against women and children have become too common. The court has the duty to send out a strong message to society that such offences will not be taken lightly. Not only did accused take away the life of deceased which had a negative impact on her family, but he has left his own child without a mother and the role that a mother plays in a child's life is one which is immeasurable.

[12] Accordingly, the accused is sentenced to a term of life imprisonment on the first count. On the second count, accused is sentenced to 8 years imprisonment.

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D N USIKU  
JUDGE

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<sup>1</sup> S v Britz 1994 NR 25 (HC) at 27.

## APPEARANCES:

FOR THE STATE:

Mr Moyo  
Office of the Prosecutor-General, Windhoek

FOR THE ACCUSED:

Mr Mbaeva  
Instructed by Directorate of Legal Aid, Windhoek