

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI

JUDGMENT

Case No: CC 4/2020

In the matter between:

**THE STATE**

v

**VENSINLAUS MBANGU MUTERO**

**ACCUSED**

**Neutral citation:** *S v Mutero* (CC 4/2020) [2022] NAHCNLD 109 (17 October 2023)

**Coram:** KESSLAU J

**Heard:** 4-7 April 2022; 19-20 April 2022; 27-29 April 2022; 17-19 May 2022; 16-19 August 2022; 14-18 November 2022; 17-21 July 2023; 21 August 2023.

**Delivered:** 17 October 2023

**Flynote:** Criminal Procedure – Murder- Combating of Domestic Violence Act 4 of 2003 - Accused pleaded not guilty to both counts of Murder – Direct intent – Accused convicted on both counts.

**Summary:** The accused is arraigned before this Court on two counts of Murder, read with the provisions of the Combating of Domestic Violence Act, 4 of 2003, of

unlawfully and intentionally killing his wife and biological son by shooting them with a firearm.

*Held;* that considering the evidence presented the version of the accused that the firearm went off by itself is a fabrication and rejected.

*Held further;* that when considering the head wounds sustained by both victims and the fact that two shots were fired in respect of each, the accused had the direct intent to murder.

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### **ORDER**

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1. On count 1: Murder (read with the provisions of the Combating of Domestic Violence Act 4 of 2003), the accused is found Guilty (with direct intent).
2. On count 2: Murder (read with the provisions of the Combating of Domestic Violence Act 4 of 2003), the accused is found Guilty (with direct intent).

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### **JUDGMENT**

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KESSLAU J

#### Introduction

[1] The accused is arraigned before this Court on two charges of Murder, read with the provisions of the Combating of Domestic Violence Act, 4 of 2003.

[2] In respect of count 1, the indictment reads that upon or about the 25<sup>th</sup> day of September 2015, and at or near Ndiyona village in the district of Rundu, the accused did unlawfully and intentionally kill Rosalia Shirenga Shitshoni, an adult female person, by shooting her several times on her head and arm with a firearm.

[3] In respect of count 2, the indictment reads that upon or about the 25<sup>th</sup> day of September 2015, and at or near Ndiyona village in the district of Rundu, the accused did unlawfully and intentionally kill Alexius Vipanda Mutero, a minor male person, by shooting him on the head with a firearm.

[4] Initially the accused, who was then represented by Mr Shipila, raised a special plea of *autrefois convict* in terms of section 106(1)(c) of the Criminal Procedure Act 51 of 1977 as amended (CPA), on the basis that he was already tried, convicted and sentenced on the same facts in the Gciriku Traditional Authority Community Court. The special plea was dismissed.<sup>1</sup> Thereafter the accused changed counsel and Mr Grusshaber assisted him until the trial reached the stage of the cross-examination of the accused, when Mr Shiningayamwe took over.

[5] The accused pleaded not guilty to both charges and presented a statement in terms of Section 115(1) of the CPA.<sup>2</sup> The accused therein admitted that on 25 September 2015 he was at Ndiyona village. Regarding the first count of murder he explained that: 'I never murdered Rosalia Shitshoni. We struggled over the firearm and a shot went off during the struggle'. Regarding the second count of murder the accused stated that: 'I fired two shots into the darkness to scare any person that might be in that direction in order for me to safely go to the Police station. I was only later informed by the Police that my son was shot and died the next morning.' Regarding the second count, the accused in his reply to the State's pre-trial memorandum<sup>3</sup> however stated: 'I shot my son by accident when I mistook him for an attacker in the dark'.

[6] Various documentary and real evidence was received during the trial and will be referred to whenever relevant to this judgment. A trial-within-a trial took place to determine the admissibility of a warning statement<sup>4</sup> and alleged confession<sup>5</sup> made by the accused which was then ruled admissible into evidence.<sup>6</sup>

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<sup>1</sup> *S v Mutero* (CC 04-2020) 2021 NAHCNLD 97 (27 October 2021).

<sup>2</sup> Exhibit "A".

<sup>3</sup> Exhibit "D" point 5.3.2

<sup>4</sup> Exhibit "X".

<sup>5</sup> Exhibits "V" and "V1".

<sup>6</sup> *S v Mutero* (CC 04-2020) [2022] NAHCNLD 45 (25 April 2022).

### Summary of evidence

[7] The first witness for the State was Munane Ermelinde Katiku, a resident of Ndiyona village. She confirmed that she knows the accused as a resident of her village. She testified that on 25 September 2015 at around 18h00 the deceased in count 1, Rosalia, was with her and her mother at their residence charging her cell phone. The phone rang whilst still connected to the charger and she overheard the deceased Rosalia explaining that she is 'close to the tarred road at the place where she previously bought a cow'. After some time another call was received by the deceased who then said she will return shortly. The witness assumed that the caller was the husband of the deceased Rosalia who is the accused before court.

[8] The witness and Rosalia then started to walk in the direction of Rosalia's home. Whilst on their way the accused met them and angrily confronted the deceased on her whereabouts. He asked three times 'where have you been, and what have you been doing there?' The witness advised the deceased not to reply and to sort out their differences in private. The deceased Rosalia thereafter walked off in the company of the accused whilst the witness turned around to her own home. She testified that after walking approximately 100 metres she heard two shots being fired into the darkness. She got scared and reported her experience to a certain bar-lady called Miriam.

[9] During cross-examination the witness testified that she spent less than three minutes in the company of the deceased and accused. Furthermore that the deceased Rosalia was her cousin. The witness denied witnessing the accused hitting the deceased Rosalia with a hat in the face or that the deceased retaliated by breaking a monkey-orange fruit (omaguni) on his face. She also denied seeing that the deceased grabbed the accused around his waist.

[10] Hippolyt Kayoka testified that he was a brother to the deceased Rosalia and was employed by the accused. On the particular date he requested an advance on his salary from the accused to celebrate his birthday. The accused had to travel to Katere village first and promised to give him money when he return. The accused then drove off in the company of an old lady and her husband. Around sunset the

same day the accused returned home and found this witness in the company of another worker with the name Katiko. The two minor children of the accused, of which one is the deceased in respect of count 2, were also present. Upon arrival the accused enquired from Katiko where his wife was. Katiko replied that she went for choir practise at church. The accused then, in their presence, made a call asking the receiver 'where are you?' The witness heard the reply being 'I am here at the tarred road where I brought money for the cow I bought.' Thereafter the accused dismissed Katiko and told the witness to wait with the two minor children.

[11] Hippolyt Kayoka proceed to testify that the accused drove off to collect his wife. While sitting waiting at the gate of the property the witness heard two gunshots being fired. He and the two minor children then went to the brickmaking business of the accused which is situated next to the courtyard of the accused. Whilst at the business side of the property a certain Mr Mudumbi arrived looking for assistance with his vehicle. He joined them in waiting for the return of the accused. After a while they observed the accused driving into his courtyard and then drove into their direction where they were at the business side of the premises. The time was around 19h00. He saw the accused stopping his car in the road and heard him saying to a certain Mr Muhere and his wife who approached the roadside 'go and look for your relative'. He also saw the accused handing a bundle of money to Mrs Muhere. The accused then started to walk in the direction of the police station, then turned to the side where the witness was with the child Alexius Vipanda. The accused then put his hands in his pockets. The witness, who was still waiting for his advance on his salary, thought the purpose was for the accused to hand over the earlier requested money. The accused then took out a gun.

[12] Thereafter this witness hid behind a vehicle whilst the child Alexius Vipanda walked towards his father. The witness saw the accused cocking the gun, at first failing to do it, cocked it again and shot the child once. He testified that the first shot 'did not take the child down' and saw the accused firing a second shot towards the child causing him to fall down. The witness indicated that these two shots were fired whilst within arm's length of the child and with himself being approximately nine steps away. He said the visibility was fine with the accused's vehicle lights still on, additional streetlights and a spotlight from a nearby shop. After the second shot was

fired the accused threw down the gun and proceeded to the police station. The child was still alive and was transported to the hospital.

[13] During cross-examination the credibility of the witness was attacked in that it was denied that he was present when the phone call was made. It was put to the witness that the accused did not stop freely on the road as Mr Muhere removed the car key preventing him to drive further. It was also put to the witness that money that was handed to Mrs Muhere was inside an envelope and not visible for him to observe. It was denied that the accused told the Muhere couple to 'go and look for your relative'. The witness denied the presence of a crowd of people or that they were screaming angrily. The witness testified that the accused uttered no words before shooting his child. The accused denied seeing this witness being present at the scene.

[14] Marcellus Mudumbi, a police officer at the time, testified that the accused is known to him. He confirmed his presence at the business premises of the accused on the particular date waiting to get assistance with a punctured tyre. He also confirmed the presence of the witness Hippolyt Kayoka. He confirmed the evidence that the accused arrived with his vehicle, drove slowly into his courtyard and soon thereafter drove down the gravel road. He also witnessed the Muhere couple approaching the vehicle and saw Mr Muhere removing the vehicle keys. He saw the accused getting out and handing money to Mrs Hendrine Muhere.

[15] Marcellus Mudumbi testified further that he heard the accused telling the Muhere couple that 'I committed a sin'. Thereafter he saw the accused walking off while his now deceased child Alexius approached him. He testified that the accused took out a pistol, point it in the direction of the child, lowered it as the child was shorter in height and fired two shots. He confirmed that after the second shot the child fell down. Accused did not say anything at the time. The child was shot in the forehead from approximately two steps away. He confirmed the visibility being reasonable with light provided by the vehicle of the accused, streetlights and surrounding businesses. The witness then went to the police and report the incident followed by the accused.

[16] During cross-examination the accused similarly denied seeing the witness on the scene. The witness denied that people were approaching the accused from the dark. He did not witness the version of Hippolyt Kayoka that the gun at first did not cock.

[17] Officer Makanga Thomas Hausiku, who was stationed at Ndiyona Police station, testified that accused is known to him. He testified that he firstly attended the scene of the deceased wife. He found her body on the stomach facing east. He observed a fracture on the left arm and one bullet wound behind the left ear. According to the witness the tracks observed indicated that the first victim was running before being shot. He witnessed a black pantyhose and a blue hat on the scene. The deceased Rosalia was loaded and transported to the mortuary. He also attended the second scene, however the child was already taken to the hospital.

[18] Officer Bernardus Ludwig Orr, stationed at Ndiyona Police station during 2015, confirmed that a report was received from Mr Mudumbi regarding the shooting of the second victim. He visited the second scene and observed the child lying face down in a pool of blood. Approximately two metres from the child a pistol was found. The child was still breathing and was taken by the witness Hypolite to the hospital. He said that there were only a few people present at the second scene.

[19] Officer Johannes Kausiku Kakoro testified that he was attached to the NAMPOL Serious Crime Division and the investigating officer in this matter. He arrested the accused on the day of the shootings. His observations of injuries to the deceased wife was a gunshot wound to her upper and lower left arm and another wound behind her left ear. The pistol found on the second scene was handed to him together with its magazine and a bullet which he identified in court.<sup>7</sup> The officer testified that he transported the remains of Rosalia from Nyangana hospital to the Rundu mortuary and that no further injury was sustained.

[20] Officer Kakoro furthermore testified that after he explained the accused's legal rights to him, he also informed him of the charge of murder of his wife. The second

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<sup>7</sup> Exhibits 1, 2 and 3.

victim was still alive at the time. The accused then made an extensive statement<sup>8</sup> to the officer relating a history of jealousy between the accused and his late wife involving a certain Mr Toni which at times were solved with the intervention of Mrs Muhere. The statement in detail explained that on that fateful day the accused called his late wife on her phone and she told him she was close to the 'tarred road'. When he eventually found her, she was in the presence of the witness Ermelinde Katiku and close to a shebeen where he saw Mr Toni parking his car. He was angry and slapped his late wife. She retaliated by hitting him with a monkey orange fruit (omaguni). They thereafter got into a physical struggle after which the deceased started to run away. The statement reads that 'After she left me and started running I then pulled out the pistol which was already cocked and shot her twice on her body'. The statement proceeded to state that he then drove home, collected money and was on his way stopped by Warrant officer Mudimbi. Thereafter it reads that '. . . I saw one of my son Vipanda, as I was still having the pistol I then shot him twice on his body but I cannot recall which side of the body and felt on the ground and I threw the pistol on the ground and I went to report myself at the Ndiyona Police Station'. (Sic)

[21] Magistrate Olayia testified about an alleged confession made to her by the accused. Her evidence was confirmed by an interpreter, Mr Mukuve, who assisted during the taking down of such confession. The confession was ruled admissible during a trial-within-a-trial and was admitted into evidence.<sup>9</sup> The confession mirrored the content and extensive nature of the warning statement to Officer Kakoro. It started with information about the problems the accused and his late wife had which was caused by jealousy. The confession also explained in detail the involvement of Mr Toni with his late wife and the fact that he once called to speak to her which caused quarrelling between the accused and his late wife. The statement confirmed that Mrs Muhere was part of solving the situation involving Mr Toni. The confession also include information regarding the trip accused took with the Muhere couple to Katere prior to the incident. It went on to describe his search for his absent wife and that he found her in the presence of Ermelinde Katiku. A quarrel started about the absence of his wife and Ermelinde then left them.

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<sup>8</sup> Exhibit "X".

<sup>9</sup> Exhibits "V" and "V1".



[22] The statement noted by the Magistrate reads: 'I slapped her on her face. She took Liguni traditional orange fruit she hit me with it on my head. I was having a gun in its holster. She grabbed around my waist she also grabbed the gun which was in the pocket of my jean trousers. We wrestled around. Her hand went into my pocket. She took out the firearm and left the holster inside. The firearm was already loaded. I grabbed the gun in the middle when she grabbed the side of the butt. I managed to take the gun from her. Then she started running. I was also confused. I then started shooting in the direction where she was running to. From there I went home. When I reached home I realised that I committed a crime. The car key was removed from the ignition. I then decided to foot to the police station. I was driving from the house in order to go to the police station. Then these Makanga, Muhere and Mundimbu stopped the car. They switched off the engine and removed the key from the car. I got out of the car and started to foot to the station. I then saw my son standing there. I don't know where he came from. I also shot him. From there I dropped the gun there and continued to walk to the police station.' (sic)

[23] Mungeli Hendrina Katiku (Mrs Muhere) testified that she is a cousin to the accused. She testified that on 24 September 2015 the accused told her that his late wife is having an affair with Mr Toni. She confirmed that on 25 September 2015 she assisted in mediating the relationship problems involving Mr Toni. The evening of 25 September 2015 a report was made to her that the accused and his late wife were seen fighting. She confirmed the previous evidence that the accused arrived at his home by car and that he was then stopped by them on the road. She confirmed the presence of the various witnesses on the scene and the fact that the accused handed her a bunch of money and a chequebook. She testified that the accused told them he shot his wife and she then bowed her head in shock. She then heard a gunshot which made her look up. She then saw the accused firing the second shot from a distance of two steps from his child with the child falling down. She confirmed that the accused then threw the gun on the ground and walked away. She was approximately nine steps away at the time. She confirmed the presence of vehicle- and street lights on the scene.

[24] During cross-examination Mrs Muhere contradicted the version of witness Hippolyt Kayoka that the accused told them 'to go and look for their family'. It was put to her that the accused will deny that he admitted to shooting his wife to them.

She denied that there was a crowd present talking from the dark or that the crowd was approaching the accused. She insisted that the visibility was sufficient for the accused to recognise his child before firing the two shots at him.

[25] Officer Sikuvi Cosmas Mipasi from Ndiyona Police station testified that on 25 September 2015 he was on duty. He confirmed that Officer Mudumbi reported the second shooting. Thereafter they visited the scene where they found the child in a pool of blood whilst still alive. He picked up a pistol on the scene and handed it over. He confirmed the visibility as clear on the second scene and that the child was taken to Nyangana hospital. He also visited the scene where the wife of the accused was shot which was approximately one kilometre away. He confirmed the blood covered body of the deceased Rosalia.

[26] Officer Uatema Richard Rudolf from CID Rundu testified that he attended both scenes with colleagues. He confirmed the injuries observed on the deceased persons. He testified that two spent cartridges were retrieved from the scene where the child Alexius Vipanda was shot and another spent cartridge was retrieved from the scene where the late wife of the accused was found dead.

[27] Officer Haimbili Petrus Sitongeni testified that he attended the first scene and confirmed the position and injuries observed on the late wife of the accused. When lifting the body for transportation he observed that the left arm appeared fractured. He testified that he assisted in transporting the female deceased body to Nyangana hospital where she was declared dead. He then transported the body to the mortuary and said that no additional injuries were sustained during this process.

[28] The medical officer that conducted the post mortems on the deceased persons has since left to his country of origin and Doctor Armando Perez-Ricardo testified to explain the findings. The post mortem<sup>10</sup> done on the late wife of the accused noted the cause of death as a 'gunshot and open skull fractures, Brain damage'. Four wounds were noted to her head being two entry- and two exit wounds. Additionally the left arm was fractured by gunshot at both the lower and upper bones.

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<sup>10</sup> Exhibit "H".

[29] The post mortem<sup>11</sup> findings regarding the cause of death of the second victim, a six year old boy, Mutero Alexius Vipanda, were 'gunshot and open skull fracture, Brain damage'. The doctor's opinion, based on measurements of the wounds, indicates that the bullet entered on the left temporal area of the boys' head and exit at the frontal area of his head.

[30] Officer Julia Zombo attached to the NAMPOL Scene of Crime subdivision testified that she visited the first scene on 25 September 2015. The body of the deceased Rosalia was already loaded onto the vehicle for transportation. She afterwards met the accused and noticed suspected blood spatter on his t-shirt, jean trouser and sandals. The next day she visited the second scene where the accused's son was shot. Two spent cartridges were found approximately three steps from where he was shot.<sup>12</sup> Another spent cartridge<sup>13</sup> and live bullet<sup>14</sup> was handed to her which was forwarded for ballistic testing together with the firearm.<sup>15</sup> A report was received positively linking the firearm to the spent cartridges.<sup>16</sup> The officer compiled a sketch plan<sup>17</sup> indicating the area surrounding the two scenes and compiled a photo plan<sup>18</sup> of the second scene.

[31] During the cross-examination of officer Zombo it was pointed out that she failed to test for gunshot residue on the hands of the accused or the bodies of the victims. She blamed it on her inexperience at the time. She testified that the suspected blood spatter witnessed on the clothes and shoes of the accused was an indication that he was very close to the victims when the pistol was fired but however conceded that no scientific proof was available regarding the presence of blood on the clothes of the accused. She conceded that the photo plan of the second scene was only compiled in 2022 and that some pictures she initially took were misplaced.

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<sup>11</sup> Exhibit "N".

<sup>12</sup> Exhibit 4.

<sup>13</sup> Exhibit 5.

<sup>14</sup> Exhibit 3.

<sup>15</sup> Exhibit 1.

<sup>16</sup> Exhibit "R".

<sup>17</sup> Exhibit "Q".

<sup>18</sup> Exhibit "W".

[32] Officer Selma Shikongo of NAMPOL Serious Crime Subdivision testified that she accompanied officer Zombo to the scenes of crime. She confirmed the evidence on what was observed and items retrieved on the scenes. She contradicted officer Zombo by testifying that they did not meet the accused on the day of the incidents.

[33] The final State witness, Muronga Johannes Mbangi, testified that he is a nurse stationed at Nyangana hospital. He testified that two men arrived with an injured boy, assistance was given and the boy was transferred to Rundu hospital as they could not treat him for the brain/head injury. He could however not give any detail on the identification of the injured boy or the two men and his evidence did not take the matter any further.

[34] Accused elected to testify and his evidence started with a detailed account of telephone calls involving Mr Toni and his late wife on the day prior the incident. It also focused on his wife's absence from home that night. He furthermore gave an account of Mr Toni arriving and the solving of their misunderstanding with the assistance of Mrs Muhere. He confirmed that in the afternoon of 25 September 2015, when returning from his trip to Katere and enquiring about the whereabouts of his late wife, the domestic worker informed him that she possibly went to church. He confirmed that he called his late wife several times on her cell phone and that she informed him she is at the 'tarred road' and later that she is at the dam. He went searching for her and eventually found her in the company of Ermelinde. An argument started between them with Ermelinde advising them to solve their problems in the privacy of their home. The accused then hit his late wife with a hat on the left side of her face while she retaliated by smashing a monkey orange into his face. They were thereafter engaged in a physical struggle with the deceased managing to remove his pistol from his pocket while shouting and crying for help. Ermelinde at this stage said she is not getting involved and left.

[35] The accused further testified that both he and the deceased were holding on to the gun whilst still wrestling and in the process the gun went off. One shot was fired and the deceased fell on the ground together with the pistol. The accused could not say who pulled the trigger and testified that it only went off once. Thereafter the accused, who was in shock, picked up the gun and left to look for assistance. He

confirmed that he drove first to his court yard where he found no-one. He then stopped on the gravel road and was approached by the Muheres who asked him what happened. The accused told them that there was an accident involving his wife and that he wants to report to the police in order to get help. He confirmed that the key to his vehicle was removed and confirmed that he handed money and a chequebook concealed in an envelope to Mrs Muhere. He said the time was around 19h00 then. At that stage he heard in close proximity a crowd gathering around him who were shouting 'try to catch him'. He got scared and fired two shots into the direction that he intended to walk into to 'clear the way'. He heard the Muheres screaming, warning him that his child is in the direction he is shooting into.

[36] The accused further testified that thereafter the streetlight got on and he threw the gun on the ground, walked to the police station and reported the two incidents. He only realised the next morning that he shot someone at the second scene and that it was his child when the police informed him.

[37] During cross-examination the accused denied seeing his child when he fired these shots. He was unable to confirm if the streetlights were on but insisted that it was dark. When asked about the fact that multiple injuries were sustained by his late wife while he only testified about one shot being fired, he said maybe the deceased was covering her head with her arm at the time. The accused insisted that the witness Ermelinda witnessed the struggle for the gun between him and the deceased. He insisted that the gun fired only once and that it went off by itself. He testified that Ermelinda is lying about hearing two shots and could not remember that in his warning statement and statement to the Magistrate stated that he was in possession of the gun and fired the two shots. He confirmed that after his wife fell he did not establish her condition or try to help but went to the police instead. He denied that he saw the various witnesses being present at the second shooting and insisted he heard voices that made him fire in that direction. The accused in many instances avoided answering questions by instead posing his own questions to the prosecutor.

[38] The version presented in court by the accused is in direct contrast with the eye-witnesses' account regarding the circumstances in which the deceased persons were killed. In that regard I will consider the merits and demerits of both versions

including the probabilities of each to establish if the charges were proved beyond reasonable doubt or if the version of the accused might be reasonably possible.<sup>19</sup>

[39] It is not in dispute that the pistol was the property of the accused or that the shots were fired from this pistol which hit both victims causing their deaths. It is also undisputed that both victims were in a domestic relationship with the accused with Rosalia Shirenga Shitshani being his wife and Alexius Vipanda Mutero their biological child. It is also undisputed that a history of domestic quarrels based on jealousy existed between the accused and his late wife. The questions to be determined are, firstly, at the first scene where his wife died, who fired the pistol and how many shots were fired and secondly, in both instances, if the accused had the intention to kill.

[40] In considering the credibility of the various witnesses I have to keep in mind that most of the eye-witnesses were related to either the deceased or the accused and might have a degree of bias. Furthermore the incident happened a considerable time ago in 2015 and memories tend to fade with time. Interesting to note that the accused never denied the presence of the various witnesses on the scenes but chose to testify that he did not see them there. That is not exactly saying that they were not present only that he did not observe them. There are some contradictions in the evidence of the witnesses however these appear to be of a minor nature or not relevant to the questions before court. In general I am satisfied that the witnesses gave reliable versions of what transpired.

[41] The onus rest on the State to prove the allegations in these charges beyond reasonable doubt and any reasonable explanation of the accused should be accepted. Considering the evidence before court presented by the eye-witnesses, the admissions made by the accused, in both his warning statement and to the Magistrate, it is clear that the version of events that the accused gave under oath in court came as an afterthought and can safely be rejected as false when inconsistent with the presented evidence.

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<sup>19</sup> *S v Engelbrecht* 2001 NR 224; *S v Radebe* 1991 (2) SACR 166 T.

[42] The evidence against the accused is overwhelming and it was proven beyond reasonable doubt that the accused fired the pistol twice at his late wife. The medical evidence, and the suggestion from the accused during evidence, indicates that his late wife was covering her head in a protective manner whilst fleeing at the time. The fact that he aimed at her head and that he fired two shots is an indication that he had the direct intention to kill her. Regarding the second charge, the evidence is that visibility was clear at the second scene and the witnesses, who were even further away than the accused from his child, could clearly identify the child. The evidence is that the accused in fact lowered the gun to aim at his six year old son, aimed at his head and fired the pistol twice and similarly is an indication that he had the direct intention to kill.

[43] After careful consideration of the evidence before court and in conclusion the accused is convicted as follows:

1. On count 1: Murder (read with the provisions of the Combating of Domestic Violence Act 4 of 2003), the accused is found Guilty (with direct intent).
2. On count 2: Murder (read with the provisions of the Combating of Domestic Violence Act 4 of 2003), the accused is found Guilty (with direct intent).

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E.E. KESSLAU  
JUDGE

## APPEARANCES

FOR THE STATE: V T Shigweda  
Office of the Prosecutor - General, Oshakati

FOR THE ACCUSED: A Shiningayamwe  
Directorate of Legal Aid, Oshakati