

REPUBLIC OF NAMIBIA



**HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION
SENTENCE**

Case No: CC 15/2021

In the matter between:

THE STATE

and

MARKUS SHIKERETE

ACCUSED

Neutral citation: *S v Shikerete* (CC 15/2021) [2023] NAHCNLD 132 (1 December 2023)

Coram: KESSLAU J

Heard: 13 November 2023 and 16 November 2023.

Delivered: 1 December 2023

Flynote: Criminal law- sentencing discretion- murder with direct intent read with the provisions of the Combating of Domestic Violence Act 4 of 2003- seriousness of the crime, interests of the society and personal circumstances of the offender considered- aims of punishment.

Summary: The Accused was convicted of murder read with the provisions of the Combating of Domestic Violence Act 4 of 2003. He killed his own child who was only one month old by stabbing him with a knife in the abdomen. He went to the house where the baby was staying with the premeditated intention to remove the child from

this world. He isolated the child from the safety of her mother by pretending that it was too hot in the room and that he wanted to spend time with his baby outside. The accused then used a knife to stab his child three times in the stomach. These stab wounds resulted in the intestines of the baby protruding from the open wounds and resulted in her suffering a cruel death. The accused's personal circumstances were that he was a first time offender who had spent about a year and some months in custody pending the finalization of this matter. Amongst other reasons he informed the court that he committed the offence because he did not have the means to take care of the child. The court also considered the triad factors when sentencing the accused in the matter.

Held: that the crime of murder in a domestic context is extremely prevalent in our country with a disturbing trend of parents killing their own children and it is in the interest of society that the accused be punished for his crime and society demands that much from courts.

Held further: that although the court endeavours to balance and harmonize the triad factors during sentencing it is mindful of the fact that in some circumstances during sentencing it might be necessary to emphasise one factor at the expense of another.

Held also: that there was no sign of regret or remorse from the accused during the proceedings in court and even though he admitted to committing the offense in every instance blamed someone else for his actions.

ORDER

On Murder (*dolus directus*), read with the provisions of the Combating of Domestic Violence Act 4 of 2003, the accused is sentenced to 22 years' imprisonment.

SENTENCE

KESSLAU J

Introduction

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[1] The accused was convicted before this Court on a charge of Murder with direct intent, read with the provisions of the Combating of Domestic Violence Act 4 of 2003. The matter is on the roll for sentencing.

[2] In considering an appropriate sentence this court will take into account the triad of factors being the interest of society, the personal circumstances of the accused and the crime committed. The aims of punishment *to wit* retribution, rehabilitation, deterrence and prevention will form part of the factors to be considered during sentencing. Finally an element of mercy will form part of the sentencing without it being misplaced pity.¹ This court will also endeavour to balance and harmonize the above factors during sentencing whilst being mindful of the fact that in some circumstances during sentencing it might be necessary to emphasise one at the expense of another.²

[3] The crime of murder in a domestic context is extremely prevalent in our country with a disturbing trend of parents killing their own children. The victim was a one month old defenceless baby. The accused apparently committed the offense because his family members told him he was too young to support his child. He went to the house where the baby was staying with the premeditated intention to remove the child from this world. He isolated the child from the safety of her mother by pretending that it was too hot in the room and that he wanted to spend time with his baby outside. The accused then used a knife to stab his child three times in the stomach. These stab wounds resulted in the intestines of the baby protruding from the open wounds and resulted in her suffering a cruel death. Furthermore the witnessing of these injuries must have been an extremely traumatic experience for all involved particularly for the mother of the deceased. The accused did not take the court into confidence as to what he did with the murder weapon afterwards.

[4] It is in the interest of society that the accused be punished for his crime and society demands that much from courts.³ I will discuss the interest of the affected person in conjunction with the interest of society. The mother of the deceased child submitted a sworn statement in terms of s 25 of the Combating of Domestic Violence

¹ *S v Zinn* 1969 (2) SA 537 (A); *S v Tjiho* 1991 NR 361 (HC); *S v Katale* (CC 5/2021) NAHCNLD 80 (2 September 2022); *S v Rabie* 1975 (4) SA 855 (A); *S v Ganes* 2005 NR 472.

² *S v Van Wyk* 1993 NR 426.

³ *S v IK and another* (CC13/2021) [2023] NAHCMD 587 (22 September 2023).

Act 4 of 2003 stating that neither the accused nor his family apologized for his' actions.⁴ They offered no emotional support and, even though a community court ruled that compensation should be paid for the loss of her child, nothing was received. She lost her first born child at the hands of the accused and will have to live with that pain for the rest of her life.

[5] I will now turn to the personal circumstances of the accused. He was estimated to be 19 years old at the time of committing the offense and thus still very young. At this age he was still in Grade 6 and from the various school reports it is clear that the accused failed most subjects repeatedly. His intellectual development appears not to be on par with his age when considering his demeanour and behaviour in court. He is a first offender and furthermore he spent a period of approximately one year and 8 months in custody awaiting finalization of this matter.

[6] The accused testified that he never met his father and that his mother passed on when he was younger which left him in the care of his grandmother. He is unmarried with no children. Furthermore he is unemployed and making a living out of informal farming. The accused testified that an amount of N\$ 15 000 was paid to the mother of the deceased for compensation. Two receipts were handed into evidence of payments made to the Gciriku Traditional Authority for the 'Shikerete Markus case'.⁵ The dates on them is approximately one year after the death of the deceased and they are for a lesser value than what the accused claimed in evidence.⁶ The compensation was made by a family member of the accused and even though the mother of the deceased claimed otherwise, appears on face value to have been received by the Traditional Authority. Finally there was no sign of regret or remorse from the accused during the proceedings in court and even though he admitted to committing the offense, in every instance blamed someone else for his actions.

[7] In balancing the above mentioned sentencing factors, the youthfulness of the accused counts in his favour. However the fact that he could easily be influenced by the mere say so of other people to kill his child and the fact that he does not take any responsibility for his actions but instead either blame the influence from his family or

⁴ Exhibit "X".

⁵ Exhibit "Y".

⁶ N\$ 10 800.

the 'devil', is an indication that he is a danger to society and thus should be removed for a considerable period of time.

[8] In conclusion the accused is sentenced as follows:

On Murder (*dolus directus*), read with the provisions of the Combating of Domestic Violence Act 4 of 2003, the accused is sentenced to 22 years' imprisonment.

E.E. KESSLAU
JUDGE

APPEARANCES

FOR THE STATE: S. Petrus
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FOR THE ACCUSED: S. Makale
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