

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI  
JUDGMENT

Case No: CC 16/2022

In the matter between:

**THE STATE**

v

**FILLIPUS NATANGWE ROBERT**

**ACCUSED**

**Neutral citation:** *S v Robert* (CC 16/2022) [2024] NAHCNLD 20 (23 February 2024)

**Coram:** KESSLAU J

**Heard:** 6, 8 and 14 February 2024

**Delivered:** 23 February 2024

**Flynote:** Criminal Law - Criminal Procedure – Sentence – Murder (*dolus eventualis*) - Combating of Domestic Violence Act 4 of 2003.

**Summary:** The accused was convicted on his plea of guilty on a charge of Murder (*dolus eventualis*), read with the provisions of the Combating of Domestic Violence Act 4 of 2003. The accused killed his biological father by means of a 'panga' causing multiple injuries. Sentencing objectives and principles restated.

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**ORDER**

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1. Murder (*dolus eventualis*), read with the provisions of the Combating of Domestic Violence Act 4 of 2003 – 22 years' imprisonment.

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**SENTENCE**

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KESSLAU J

[1] The accused was charged with one count of Murder (read with the provisions of the Combating of Domestic Violence Act 4 of 2003). The allegations were that the accused on 18 September 2021 at or near Shuulula Village in the district of Eenhana unlawfully and intentionally killed Absalom Robert who was his biological father by chopping him with a 'panga' all over his body. The deceased passed on at the scene due to multiple injuries sustained.<sup>1</sup>

[2] The accused, assisted by counsel, pleaded guilty to the charge indicating the form of intention under which the murder was committed as *dolus eventualis*.<sup>2</sup> The plea was accepted by counsel for the State and the accused was accordingly convicted.

[3] This court is now tasked with the finding of an appropriate and suitable sentence and 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. An element of mercy will form part of the sentencing which should not be misdirected pity.<sup>3</sup>

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<sup>1</sup> Exhibit "A": Indictment and summary of substantial facts.

<sup>2</sup> Exhibit "B": Statement in terms of s 112(2) of the Criminal Procedure Act 51 of 1977.

<sup>3</sup> *S v Zinn* 1969 (2) SA 537 (A); *S v Tjiho* 1991 NR 361 (HC); *S v Rabie* 1975 (4) SA 855 (A); *S v Ganes* 2005 NR 472.

[4] This court will also endeavour to balance and harmonize the above factors during sentencing whilst being mindful of the fact that in some circumstances, it might be necessary to emphasise one factor at the expense of another.<sup>4</sup>

[5] In an attempt to satisfy the principle of uniformity in sentencing I have considered sentences imposed for similar offences whilst keeping in mind that the circumstances in each matter are unique.<sup>5</sup>

[6] In considering the interest of Society during sentencing it is the duty of this court to uphold the law whilst at the same time reflecting society's resentment and aversion towards those making themselves guilty of heinous crimes.<sup>6</sup> It is furthermore important to impose a sentence that will deter the constant wave of crimes committed within domestic relationships.

[7] In terms of section 25 of the Combating of Domestic Violence Act 4 of 2003, the wife of the deceased testified regarding the impact of his death on the family. She is also the biological mother of the accused and she was therefore in the difficult position in that on the one hand she suffered the loss of her life partner whilst simultaneously having the interest of her son at heart. Her evidence needs to be considered against these circumstances.

[8] She narrated to court that she was married to the deceased for 29 years prior to his death. The deceased was 62 years old at the time. He fathered nine children of whom three are still minors. She testified that the deceased and accused had a peaceful relationship and that they had no problems at home. She testified that the accused is a well-disciplined child and, referring to the previous conviction of malicious damage to property, said that it was an isolated incident. She could not shed any light on the reason for the accused killing his father even though she was an eye-witness. She testified that after the death of her husband she is supposed to pay compensation to his family. Additionally, the deceased was the sole breadwinner

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<sup>4</sup> *S v Van Wyk* 1993 NR 426.

<sup>5</sup> *S v Van Wyk* (CC 26/2022) [2023] NAHCNLD 114 (2 November 2023); *S v Gowaseb* (CC 2/2019) [2020] NAHCMD 423 (21 September 2020); *S v Katale* (CC 5/2021) [2022] NAHCNLD 80 (2 September 2022).

<sup>6</sup> *S v Seas* (CC 17/2017) [2018] NAHCMD 245 (17 August 2018).

to the family and they have thus lost this source of income. Finally she said she had forgiven the accused for his actions and suggest the court impose an appropriate sentence.

[9] The personal circumstances of the accused was placed before court by the accused testifying under oath. He testified that he was 22 years old at the time of the murder. The accused spent 2 years and 5 months in custody trial awaiting. He is unmarried with no children. The accused completed Grade 12 in 2018 and since then was assisting his parents at home. In cross-examination the accused agreed with the State that his father died a gruesome death. The accused requested a lenient sentence stating that he hope of having a life after the completion of his punishment. When asked about the reason for killing his father, he said it is because the deceased told him on that day that he is not his biological child.

[10] The accused insisted that the denial of paternity by the deceased was uttered only once and therefore the action of the accused of killing his father appears to be irrational and mindboggling. However, the accused at the time was still at a youthful age which counts in his favour and will be regarded as a mitigating factor.

[11] Often a plea of guilty is an indication of remorse from an accused person who has accepted responsibility for prior actions and has start on the road to contrition and redemption. I have no reason to belief otherwise in this matter and will consider his acceptance of guilt as mitigating factor as the plea of guilty took some courage. Additionally, he saved his mother and other witnesses the trauma of reliving the details of the horrific event in court.

[12] The accused is not a first offender in that a previous conviction of malicious damage to property was proved by the State.<sup>7</sup> The relevance of the previous conviction is not only that it involved an element of violence but furthermore the offence was directed at the deceased who was the complainant in the previous matter. To make matters worse for the accused, he was sentenced on the previous case a mere eight days prior to the murder of his father. In that matter he received a

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<sup>7</sup> Exhibit "C".

totally suspended sentence on the condition that he complete a period of community service and instead of making use of this second change went on to commit murder.

[13] Counsel for the accused referred to the matter of *S v Neromba*<sup>8</sup> submitting that in that matter the accused was sentenced on his plea of guilty on a similar charge of murder in a domestic context to 20 years' imprisonment of which 5 years were suspended. It was argued that the sentence was in accordance with the principles laid down in *S v Gaingob and others*<sup>9</sup>. On that point counsel for the State in reply argued that the circumstances of the matters are distinguishable in that the former accused was of an advanced age, a first offender and spent four years trial awaiting. I agree with the submissions made by the State in this regard.

[14] Counsel for the accused also referred to *S v Werner*<sup>10</sup> where a term of imprisonment of 18 years' imprisonment was imposed on a charge of murder committed with the intent of *dolus eventualis*. The State however pointed out that in the Werner matter the murder was not committed in a domestic context. I again agree with the State that the matter is distinguishable from the case at hand. It is furthermore clear from the Werner matter that the absence of direct intent is not necessarily to be regarded as a mitigating factor in that 'the facts of each case must be considered in determining whether the absence of direct intent (and not the mere existence of *dolus eventualis*) would constitute a mitigating factor.'

[15] The crime of murder that the accused stood convicted of is extremely serious and even more so because it was committed in a domestic context. The accused attacked and killed his own father in the most gruesome manner by hacking at him with a panga. The last living moments of the deceased was spent whilst being attacked by son with an extremely dangerous weapon. The deceased sustained open wounds on various parts of his body. Furthermore the medical report indicates defensive wounds on both hands of the deceased.<sup>11</sup> It is clear from the photo plans<sup>12</sup>

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<sup>8</sup> *S v Neromba* (CC 12-2022B) [2023] NAHCMD 483 (8 August 2023).

<sup>9</sup> *S v Gaingob and others* 2018 (1) NR 211 (SC).

<sup>10</sup> *S v Werner and others* (SA 8-2021) [2023] NASC (28 July 2023); *S v Gariseb* 2016 (3) NR 613 (SC).

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

<sup>12</sup> Exhibits "K" and "L".

that due to the various wounds the deceased must have died an excruciating painful death.

[16] After careful consideration of the above principles, factors and circumstances the accused is sentenced as follows:

1. Murder (*dolus eventualis*) (read with the provisions of the Combating of Domestic Violence Act 4 of 2003) – 22 years' imprisonment.

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E.E. KESSLAU  
JUDGE

**APPEARANCES**

**FOR THE STATE:** M. N.T. Hasheela  
Office of the Prosecutor - General, Oshakati

**FOR THE ACCUSED:** P. M. Hango  
On the instructions of the Directorate of Legal Aid