

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**THE STATE**

and

**TEOPHELUS NGHILONGWA NEPANDO**

**CORAM: MULLER, J**

Heard on: 09 May 2007

Delivered on: 10 May 2007

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**SENTENCE**

**MULLER, J.:** [1] The accused was convicted of the murder of Paulina Johannes by chopping her with a panga.

[2] No previous conviction were proved.

[3] Ms Kishi called the accused to testify in mitigation. He first related his personal circumstances to the Court.

- He is 31 years old and only attended school up to Grade 3;
- He has 5 children, whose ages range from 10 to 4, who are cared since

- he was in custody by either his mother or grandmother;
- He was a cattle herder and sold clothes for an income;
  - He is HIV+ and has to receive medication on a regular basis; and
  - He believes that his family paid traditional compensation to the family of the deceased but do not know whether it has been done or what has been paid.

The accused further said he has remorse for what he did. He feels bad about it and recognises that what he did, cannot be undone. He asked the Court to show him mercy.

[4] Ms Kishi requested the Court to take his personal circumstances and especially his state of health, into account for the purpose of sentence together with the other interests which she concedes call for a severe sentence. She cited from previous cases by the Namibian High Court where a wife or girlfriend was killed by the husband or boyfriend using a dangerous weapon, where the sentences ranged from 18 to 20 years imprisonment and suggested that a sentence in that order be imposed.

[5] Ms Jacobs argued that the accused will be treated for his illness in prison and that at least for the past 2½ years, while he was in custody awaiting trial, the accused's children were in fact cared for by either his grandmother, family or their respective mothers. She submitted that society would demand that the accused be severely punished for committing such brutal and heinous deed. She referred the Court to a recent judgment by Mainga, J the case of *S v Stanley Danster* where the girlfriend of the accused died of 12 panga wounds. He was sentenced to 35 years.

[6] In considering what an appropriate sentence for the accused should be, the Court considers the elements of retribution, prevention, deterrence and

reformation or rehabilitation and attempts to incorporate a combination thereof in the sentence to be imposed. Furthermore, a balance of the circumstances relating to the accused, the crime and society, coupled with a blend of mercy is the aim that the Court's attempts to achieve when imposing an appropriate sentence. (*S v Zinn* 1969 (2) SA 537 (A) and *S v Rabie* 1975 (4) SA 855 (A)).

[7] I have considered the personal circumstances of the accused. They do not weigh up to the seriousness of the crime he committed. His children have been cared for during the past 2½ years. A difficult burden is of course placed on his grandmother and the other mothers and family. The accused should have thought of this before he committed the act. The fact that his children now suffers, is a direct consequence of this deed. I cannot see how his health condition would have any affect on incarceration. The prison authorities have provided him so far with medical treatment, although the accused have experienced problems with the regularity thereof. At least such medication would cost him nothing, while he has to pay for it if he is not in prison.

[8] The offence that the accused has committed cannot be otherwise described, namely as brutal and heinous. I also believe that the accused planned to kill the deceased and that is the reason why he took his panga to a wake. I do believe that there was some provocation, because the deceased quarrelled with him before she left, 2 days prior to the incident and again when he walked with her and told him she may not return to him. However, such provocation can never justify any retaliation of using a weapon to assault her. The accused in reality chopped her to death. He inflicted 12 wounds on her, although most then on her bare hands when she attempted to defend herself with her bare hands. I reject his version of the accidental killing and the manner in which he described it. The several wounds the doctor found on her hands indicate several cuts. Apart from this he used the panga to chop at her at least 3 times. She had chop wounds on her left hand, against her head and her throat was cut from ear to ear severing all the main arteries, so causing her death. This indicates at least 3 different chopping wounds delivered to a defenceless woman with a baby with her. This action was in my opinion inhuman and cannot be tolerated in any civilised society.

[9] This brings me to the interest of the society. It has frequently been said by our Courts that offences where men resort to dangerous weapons to dissolve household disputes are not to be tolerated by society and that society demands that such offenders be severely punished by the Courts. In the cases referred to by both counsel, husbands or boyfriends stabbed or cut their partners by using knives or pangas. Despite sentences of long term imprisonment, these type of offences still continue. The Court, as an

instrument of society, has the responsibility to impose a visible and balanced punishment, and for this accused it will be a long term of imprisonment for this type of crime.

[15] The elements of punishment have been referred to above. The aspect of retribution should not be over-emphasised, but the offender should experience by the sentence imposed that he is punished. It has been said that from the side of the offender retribution amounts to the atonement for his crime through the punishment which he receives. From the side of the community it amounts to an “emphatic denunciation” of the offender and his crime and the infliction of pain to the degree he deserves. By serving his sentence it is regarded that his debt to society has been paid. (*Du Toit - Straf in Suid Afrika*, 1<sup>st</sup> edition, page 103). If the punishment is too lenient, he is not “hurt” as this element of retribution has been described.

In *S v Ndlovu* 1969 (2) SA 230 (R), Young, J said:

“The object of punishment is to hurt the offender and to hurt him sufficiently to prevent him from committing a similar offence.”

The elements of prevention of deterrence hits on both the convicted accused and society. The accused has to be deterred not to commit such an offence again and others should take heed of the sentence imposed on this accused for his offence, not to commit a similar offence. In the same vein, both the accused has to be prevented to commit such an offence again and the sentence should prevent other members of the community from committing such an offence. Finally, rehabilitation should also form part of the purpose of sentencing an accused.

[11] I have already indicated that the accused has to be sentenced to a long period of imprisonment. Both the nature of the offence and society demands it. The prevalence of these type of offences are there for anymore to read in the newspapers or hear over radio broadcasts or even to be seen on

television. The courts are confronted with all these incidents and severe sentences have been imposed. The question is whether that helped to prevent these type of offences to be committed. I believe society that looks up to the courts to impose suitable sentences also has a role to play. The sentences imposed by the courts will not stop this steam-rolling effect of such offences if the community does not educate its members and bring the consequences of committing such deeds to everyone's attention. The Courts will discharge its responsibilities and in this particular case this Court again says such conduct will not be tolerated and I shall neglect my duty if I do not impose a severe sentence on this accused.

[12] Taking all the relevant elements and interests into consideration the accused is sentence as follows:

“30 years imprisonment.”

**MULLER, J**

**ON BEHALF OF THE STATE:**

**MS H. JACOBS**

**INSTRUCTED BY:**

**OFFICE OF THE PROSECUTOR-GENERAL**

**ON BEHALF OF THE DEFENCE:**

**MS F. KISHI**

**INSTRUCTED BY:**

**DIRECTORATE OF LEGAL AID**