

CASE NO.: CC 46/2007

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

RICHARD THOMSON

ACCUSED NO. 1

IMMANUEL KATJIRE

ACCUSED NO. 2

CORAM: SIBOLEKA, J

Delivered on: 2011 January 13

SENTENCE:

SIBOLEKA, J

[1] Accused, you have been convicted of murder and robbery with aggravating circumstances and it is now incumbent upon me to consider the appropriate sentence that should be passed on you. In sentencing you today the Court must have regard to those factors mainly considered during sentencing, namely the crime, the offender and the interests of society, see S

v Zinn 1969(2) SA 537(A) the sentence to be imposed must be well balanced and based on the circumstances of this particular case.

[2] An appropriate sentence is generally the one that reflects the severity of the crime while at the same time giving full consideration to all the mitigating and aggravating factors which surround the person or the offender and the interest of the society. These factors must be weighed up one after the other. However, they need not be given equal weight because, depending on the circumstances of the case, one factor may be emphasized at the expense of another, see *S v Van Wyk* 1993 NR 42. The Court are also enjoined to consider the element of mercy in the sentencing process, see *S v Roux* 1975 (3) SA 190 (A), *S v Rabie* 1975 (4) SA 855 (AD).

[3] After a proper consideration of the aforementioned factors, the Court, in deciding what a suitable sentence will be in respect of each of you, will at the same time endeavor to satisfy the sentencing objectives which are prevention, deterrence, rehabilitation and retribution, see *S v Khumalo and Others* 1984 (3) SA 327 (A). I shall now deal with each of these factors in more detail.

[4] In this matter preference will be given to rehabilitation, prevention and deterrence. Your sentence should rehabilitate you as offenders and prevent you from committing crimes in future. It must also send a clear message to would be offenders out there that a breakdown of law and order will not be tolerated. Those who disregard human life, and make people feel unsafe in their homes will face the full wrath of the law through the imposition of severe punishment. In my view such penalties will find expression in the

society's displeasure towards crime.

[5] The offence of murder is usually viewed in a very serious light, and the same goes for the crime of robbery with aggravating circumstances. These offences often attract severe sentences. The fact that the deceased lost his life during the attack on him in his home is in itself an aggravating factor that this Court will take into consideration. More so the attack was unprovoked. The two of you acted in common purpose and hence you were indeed convicted as such, therefore no distinction will be drawn between your separate individual actions at the time of the incident.

[6] I am also alive to the fact that after the attack on the deceased you immediately proceeded to take away his vehicle.

[7] The available personal circumstances of the deceased are that he was an adult male, 81 years of age, an advanced age indeed. He was attacked, assaulted and found dead in his own home at 117 Peter Muesihange Street, Walvis Bay. The medico-legal post mortem examination revealed that the deceased died as a result of head injury caused by a skull fracture he sustained during the assault.

[8] Our society's desire for protection from this Court is very clear. People must feel free and safe to go about their daily business activities, and must even feel more safe in their own homes. A breakdown of these basic requirements of life in a civilized society like ours cannot be allowed to stand, and must be stopped by neutralizing unruly elements

with stiffer sentences. (See *S v Banda* 1991 (2) SA 352 (B))

[9] I will now look at your personal circumstances: Accused no. 1 testified under oath in mitigation of sentence. He is now 35 years old, and was between 27 and 28 at the time of the incident. He has two boys with his deceased wife Moila Kazerise who passed away on the 31st of May 2010. The kids are aged 7 and 4 years respectively. They stay at his house in Kuisebmond where a school going relative of his late wife looks after them after hours. His neighbors are also helping out. His mother aged 63 years lives on pension and is residing in Outjo. The accused was however brought up by his uncle and aunt who are also aged between 80 and 81 years respectively. He has a Honda Balade, a Ford Sierra, a 9mm pistol, a .308 rifle and cattle. These are all with his elders whom he does not know whether they are still alive. Mr. Stephas Hienieck who owns a pharmacy here in Windhoek is his former employer. He has promised to take him back when he comes out of prison, and is also helping the accused's kids financially.

[9.1] This accused has spent 5 years and some months in custody. According to his counsel, Mr. Neves, accused had taken the Court in its confidence by telling his side of the story first during bail proceedings, secondly in the section 119 of Act 51/77 plea explanation as well as in his evidence in chief during the trial. I must however point out here that the revelations made by accused no. 1 were only to the extent of what accused no. 2 did to the deceased during the assault. He was carefully selective in telling the Court what he himself did during and after the attack on the deceased.

[9.2] It is also common cause that there is a risk to an accused who does not challenge the evidence connecting him to the commission of the offence leveled against him. However, if despite such a connection he still elects to remain silent, such a choice nonetheless still falls within the confines of our law, and the same applies to an election to testify.

[9.3] The accused went up to grade 8 in school and was unable to continue due to financial constraints. In Walvis Bay he worked as a driver for a pharmacy, delivering ordered medicine to customers. He however, according to him did not make delivery to the deceased. He earned N\$3,500.00 per month. He used his own car which was petrolled and serviced by his employer. When he left this job he became self employed, buying and selling meat, and was earning ± N\$10.000,00 per month.

[10] Accused no. 2 testified under oath in mitigation of sentence, and so did his mother whom he called to support him. He is now 29 years old, and was 24 at the time of the incident. He is not married, and has a six year old girl whose unemployed mother resides with her parents in the reserve. The mother of his child is taking care of sick people, that is why the child stays with the accused's mother.

[10.1] He is the only male in their family, all are girls, the last two are still in school, and three are married. The accused's father is an 85 year old pensioner, and still stays with his mother. According to this accused this was his first arrest and he is not comfortable in prison. He feels bad for the murder of the deceased whom he rates as an elderly person of about the same age as his father. He told the Court that if he is given another chance,

he will not repeat it again. According to him he did not reap any fruits from this crime. This is not correct, because according to the testimony of accused no. 1, accused no. 2 took some of the tools from the deceased's vehicle in Outjo and sold them to buy bread and a cool drink. He has animals and furniture in the care of of his mother. His father is very old and the mother looks after him and the animals. The accused testified that he has stayed four years and four months in custody on this matter before the finalization of this matter. He is a first offender and he called his mother (Ingenesia Katjire) to testify in his mitigation of sentence.

[10.2] Ingenesia Katjire said accused no. 2 is her first born and the only son. Before his arrest the accused helped them financially. When out of work he used to look after the animals, of which during his absence some died or went missing only two are left. This witness and her husband had animals before but were all sold to send kids to school. According to this witness accused no. 2 never gave her problems at home. The accused's child could not attend kindergarten, because of financial constraints and she requests that the period accused no. 2 spent in custody be taken into account when considering sentence.

[11] Both counsel requested the Court to be lenient towards their clients. The deceased's vehicle has been recovered

[12] I would have preferred a sentence of a much longer period had it not been for the fact that both of you have already spent close to five years in custody pending the finalization of this matter.

[13] In the result you are sentenced as follows:

Count 1: Murder

Accused no. 1: Twenty (20) years imprisonment

Accused no. 2: Twenty (20) years imprisonment

Count 2: Robbery with aggravating circumstances Accused

no. 1: Four (4) years imprisonment Accused no. 2:

Four (4) years imprisonment It is ordered that the sentences

be served consecutively.

SIBOLEKA, J

COUNSEL ON BEHALF OF THE STATE:

INSTRUCTED BY:

MR. KONGA

THE OFFICE OF THE

PROSECUTOR-GENERAL

COUNSEL ON BEHALF OF ACCUSED NO 1:

MR. NEVES

INSTRUCTED BY:

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COUNSEL ON BEHALF OF ACCUSED NO. 2:

MR. MBAEVA

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