



CASE NO.: CC 09/2011

IN THE NORTHERN LOCAL DIVISION OF THE HIGH COURT OF NAMIBIA

HELD AT OSHAKATI

In the matter between:

THE STATE

and

NDAWEDWA IMMANUEL SHUUDENI

ACCUSED

CORAM: TOMMASI J

Heard on: 25 -26 July 2012; 3 & 7 August 2012

Delivered on: 07 August 2012

SENTENCE

TOMMASI J:[1] Mr Shuudeni – the Court convicted you of two counts of murder, attempted murder, contravening section 2 of Act 7 of 1996 (possessions of a fire-arm without a license); and contravening section 33 of Act 7 of 1996 (possession of ammunition). The Court is now called upon to impose a sentence. In doing so the Court has to consider you, the offender, the nature of the crimes you have committed; the interest of the society and the various objectives of sentencing. It is the invidious task of this Court to try and harmonize and balance these principles and apply them to the facts of this case.¹

[2] You have informed this Court that you are 45 years old. I have seen from the

¹ *State versus Van Wyk* 1992 (1) SA CLR 147,

records that you were 42 years at the time of your arrest and that you have been in custody for two years and a little over 9 months. You confirmed that you are a first offender. You are able to read and write a little bit and you attended school up to grade two. You have worked at the farm Sihetekera for 17 years and were made the foreman. This leadership position must have been entrusted to you for good reasons. Your family resided with you on the farm. It was not clear whether your family still resides at the farm or whether they moved from the farm after your arrest.

[3] You are married and your wife is 35 years old. You are the father of 9 children who are all still attending school. Your wife is unemployed and you were the sole breadwinner. In addition to your own family you also took care of your two siblings and their children. One of your brothers who took care of your children died in a motor vehicle accident. The Court takes cognizance of the fact that your family is currently experiencing financial hardship and will continue to do so if this Court imposes a custodial sentence. Your children are now raised by a single parent who is unemployed and life must be very hard for them and your wife. The financial hardship your family suffers comes about not only because of your absence but also due to the fact that your family had to compensate the victims' families to the tune of N\$16000.00. Your family members are as much victims of the crimes you have committed as the families of the deceased.

[4] As much as I have empathy for the plight of your family and your concern for their future, I cannot lose sight of the nature of the crime you have committed and the interest of society. You have killed two men execution style by shooting them in their chests. Hausiku's whose estimated age was 33 years was married to Maria Eino Cuse who you attempted to kill but miraculously only wounded her on her elbow. This was done for no apparent reason and the victims were unarmed. You simply went to your room, collected the rifle and ammunition and started shooting everyone who paid patronage to you informal beer selling enterprise. Maria described the terror she felt when she was shot. Hausiku was killed instantly whilst Angula succumbed to his injury not far from where he was shot. This was cold blooded killing.

[5] I am not persuaded that you have genuine remorse for your actions. You have indicated that you have remorse but in the same breath informed the Court that the cause of all this was Hausiku. You failed to accept that you were the one who had fired not only one but at least three shots whereas Hausiku and Angula were unarmed. Maria was standing right in front of you and you could not care less whether the bullet struck her or not. You furthermore violated the trust the owner of farm had placed in you to take care of her property in her absence by removing the rifle and ammunition from the safety of her house to your room.

[6] The nature of the offences you have committed is indeed serious. Murder has

become common place. There is growing concern amongst members of society that violent crimes are escalating and society feels hopeless and vulnerable against the onslaught.

[7] I take into consideration that you are a first offender. The fact that you have offended for the first time in the 45 years is a factor which weighs in your favour as does the fact that you have spent time in custody awaiting trial. However the nature of the offence you have now committed is so serious that your personal circumstances and considerations of reform must give way for considerations of deterrence and retribution. It would serve no purpose under these circumstances to consider suspending a portion of the sentence. I have not ignored some of your redeemable qualities as a human being but I would be failing in my duty if the wrong message is sent by imposing a sentence that is too lenient. The families of the deceased and society have a legitimate expectation that the Courts would exact retribution on their behalf and that a clear message must be sent to those who contemplate resorting to violent crimes.

[8] Like you, Hausiku was the sole breadwinner of his family and his wife testified to this Court that his death has caused her and the children to become destitute. Angula's mother testified that her son left her house to earn a living and to supported her and his sisters. She still grieves the loss of her only son and I can understand that she finds it hard to forgive you. Both Hausiku and Angula were young productive members of this society taking care of their families. What I do find quite surprising is that you under these circumstances requested this Court to impose a fine. The only appropriate sentence would be a lengthy custodial sentence.

[9] In the premises you are sentenced as follow;

1. Count 1: Murder – 30 years imprisonment
2. Count 2: Murder - 30 years imprisonment. It is ordered that 15 years of this sentence is to run concurrently with the sentence imposed in count 1
3. Count 3: Attempted murder – 5 years imprisonment which is to run concurrently with the sentence imposed in count 1
4. Count 4 and 5 are taken together for purpose of sentence – 2 years imprisonment which is to run concurrently with the sentence imposed in count 1.
5. In terms of section 10 (6) of the Arms and Ammunition Act, Act 7 of 1996 the accused is declared unfit to possess a firearm for a period of 5 years, which period will only take effect after the accused had served the sentence imposed in this case.

6. It is further ordered that the fire-arm, the holster and 1 live bullet be returned to the lawful owner and that the spent cartridges be forfeited to the State.

Tommasi J