



CASE NO.: CC 10/2011

**IN THE HIGH COURT OF NAMIBIA
HELD AT OSHAKATI**

In the matter between:

THE STATE

and

IGNATIUS PETU MURUTI

CORAM: LIEBENBERG, J.

Heard on: 17 – 20 January 2012

Delivered on: 27 January 2012

JUDGMENT

LIEBENBERG, J.: [1] The accused, now aged 19 years, stands charged with counts of murder, read with the provisions of the Combating of Domestic Violence Act, 2003 (Act No. 4 of 2003), and assault with intent to do grievous bodily harm.

[2] The accused pleaded not guilty to both charges and in the oral plea explanation advanced on his behalf by his legal representative, Ms *Mainga*, it was said that the accused did not kill the deceased Mwengere Muwara aged 17 years, intentionally, but that she accidentally got stabbed when moving in between the accused and two attackers when attempting to break up the fight between them. One of these persons is Titus Muwara who attacked him with a screw driver, and in order to defend himself, he took out his knife from his pocket (which opened by itself) and at this stage the deceased “walked into the knife”. He denies having stabbed the complainant in count 2 and claims that the injury was a mere scratch; which incident occurred whilst the accused acted in self-defence.

[3] A bundle of documents were handed in by agreement as evidence (Exh “A”), which includes the following: State’s Pre-trial Memorandum; Accused’s Amended Reply to State’s Pre-trial Memorandum; Memorandum of the Pre-trial Review Conference; Post-Mortem Report and accompanying affidavit of Dr Ramirez who performed the autopsy; original record of Rundu Case No 91/2010 inclusive of the s 119 proceedings; and Warning Statement (Pol 17) of the accused. Also handed in are the two affidavits of Matheus Hamunyela and Anti Sitarara Hausiku, relating to the identification and safe custody of the deceased's body.

[4] From the chief post-mortem findings made by Dr Ramirez on the deceased's body, it appeared to me that, although the report referred to a

“stab wound” (singular) being the cause of death, it, on the contrary, also made reference of three (3) wounds i.e. on the left side of the chest (2 cm x 1.5 cm); in the left lung (1.5 cm); and in the heart (1.3 cm) and bleeding in the thoracic cavity (600 ml). On the diagramme appear three distinctive marks in red ink, suggesting three wounds; however, next to it appear the words “*wound (singular) in the chest 2 cm deet [deep] 10 cm*”. I raised the contradiction in the post-mortem report with counsel and in order to clarify any ambiguity therein, Mr *Lisulo* called Dr Ricardo, a pathologist attached to the Oshakati State Hospital to comment on the report; as Dr Ramirez was unavailable to testify in that he, in the mean time, returned to Cuba, his country of origin. Dr Ricardo was of the opinion that the report was not clear, particularly as far as it concerns the distinctive marks indicated on the diagramme, but opined that the three wounds referred to in the report was in fact a single stab wound to the chest which simultaneously penetrated the left lung and the heart.

This conclusion is consistent with the evidence of the three State eye-witnesses as well as the accused i.e. that the deceased was stabbed only once. I accordingly accept the finding to be correctly made.

[5] During the s 119 proceedings held in the district court at Rundu the accused pleaded not guilty to a similar charge of murder and raised the defence of private defence. There appears to be nothing else forthcoming from those proceedings which may assist the Court in its determination of the case.

[6] As regards the warning statement taken from the accused on the 23rd of March 2010, the accused elected not to give a statement; taking the matter no further.

[7] The unfortunate incident that led to the demise of the deceased, Mwengere Muwara, happened on the 22nd of March 2010 at Divundu Combined School in the district of Rundu; and for the sake of convenience, the events taking place earlier that day whilst the witnesses were on their way back to the school hostels, can be distinguished from the stabbing incident that took place in the evening. It is common cause that some of the witnesses joined others on the way and later parted company as each went to his or her hostel. Although the witnesses are not in agreement as to whether the accused was part of the group or whether he was just following them, the accused's version on this point, in my view, can reasonably be accepted namely, that he was asked by the deceased to accompany her to the hostel and therefore, he was part of the group. He was no longer a learner as he had already left school the previous year. That would also explain their presence under the tree that evening where the incident took place.

[8] According to the witness Veronica Thihako ('Veronica') the accused on the way uttered words to the effect that he felt like doing whatever pleased him, which could include the killing of one of the teachers; moreso, because he came from the area they were moving in. Namuthinda Kashivi ('Namuthinda') gave corroborating evidence but added that the accused had

said he could even kill a certain Mr Kumwa, a teacher at the school. These remarks were made in general and no one responded thereto. The accused disputes this evidence. They only arrived at the hostel after sunset and because there was a black out, visibility was limited. The only form of illumination seemed to have come from the learners' mobile phones. These two witnesses were only later informed about the stabbing incident as they were not witnesses to the incident.

[9] The stabbing incident was narrated to the Court by the witnesses Dyangoma Nicky ('Nicky'); Thimbonde Thimonga ('Thimbonde') and Titus Muwara ('Titus'); the latter being the younger brother of the deceased, then aged 15 years. Nicky and Thimbonde were turning 17 later that year whilst the accused was one year older. It is common cause that Nicky, Thimbonde and Titus came from the boys' hostel, seemingly so that Titus could get some food from his sister, the deceased. Titus could not find the deceased and Nicky and Thimbonde in the mean time decided to return to their hostel, leaving Titus behind. He followed them soon thereafter.

[10] Nicky and Thimbonde, who corroborate each other in material respects, stated that as they approached a tree – still close to the girls' hostel – they heard a voice saying *"Why should you stab me with a knife?"* whereupon Thimbonde switched on the light of his mobile phone. They saw the accused standing with the deceased under the tree, holding her on the hand. They approached the two and Thimbonde returned his phone to his pocket. The deceased then drew their attention to a screw driver which was stuck into the

trunk of the tree. After Thimbonde lit up the screw driver in the tree with his phone, he removed the screw driver and asked the accused what he was up to. The accused replied that he should not be asked “funny/silly questions” whereafter the deceased said that the accused was also having a knife on him. Whilst still holding the deceased, the accused then took a knife from his pocket and stabbed the deceased once, whereafter he turned to Titus, who in the mean time, had joined them. He stabbed him on the upper arm and again tried to stab him in the face, but was blocked, cutting only Titus’s finger. The deceased started crying and moved away, only to fall down near the dining hall where she died. The accused then fled the scene and the boys went to report the incident to Mr Kumbwa.

[11] Titus testified that on his way back he heard the deceased asking as to why she should be stabbed with a knife and when he went closer, he found the accused, deceased, Nicky and Thimbonde standing under a tree. According to Thimbonde this was only after he had removed the screw driver from the tree and that Titus therefore could not have seen or handled the screw driver as Thimbonde had put it in his pocket. Titus confirmed that he had not seen or handled any screw driver. He saw the accused holding the deceased on her hand and after putting his hand into his pocket, he stabbed the deceased who started crying and moved towards the dining hall where she fell down. He wanted to help his sister when the accused turned to him and stabbed him on the right upper arm. When the accused tried to stab him in the face he blocked the blow with his arm and got cut on the finger. It is the

State's case that neither Thimbonde nor Nicky did any thing at that stage and they just remained standing there.

[12] Titus was examined by Dr Ncomanzi at Andara Hospital the same night and his testimony is that there was a bruise on the index finger of the left hand and a laceration on the right (upper) arm, exposing muscles. In his view it was a deep wound, but not life threatening. In cross-examination he disputed that the wound on the arm could be described as barely a "scratch".

[13] As stated, the accused denied having made any remark on the way to the hostel about him feeling like killing someone and testified that he was asked by the deceased, with whom he was in a love relationship at the time, to escort her back to the hostel. He waited outside for her and she joined him under the tree near the hostel when she came out after dropping her stuff. He said he was leaning against the trunk of this tree when Titus and Thimbonde arrived and Titus all of a sudden pulled out a screw driver with which he tried to stab the accused. He diverted the stab and the screw driver ended up stuck in the trunk. Titus then punched him on the nose from which he was bleeding. They exchanged fist blows and during this he took his knife out of his pocket. He opened the blade with a motion (demonstrated in Court) which can be described as using only one hand and while holding the handle (hilt), "throwing" it downward, forcing the blade to open. I pause here to remark that the spring action of the knife is no longer functioning properly, meaning that the blade when open, easily falls back into the closed position when pointed upward.

[14] According to the accused, the time he had opened the blade, the deceased moved in between him and Titus and then moved forward in an embracing manner with both her arms; during which she got stabbed by the knife. He said this was completely unintentional. She cried out and moved away from the spot, going in the direction of the girls' hostel. Titus continued fighting him while Thimbonde was busy removing the screw driver from the trunk. During one of the punches Titus threw at him, he was "scratched" on his finger. Titus then came forward in a stooping position wanting to put his arms around the accused and in this process he was again "scratched" on his upper arm. When he retreated the accused managed to run away.

[15] The accused furthermore denied that the deceased, while under the tree with him, uttered words to the effect that the accused wanted to stab her with a knife as testified to by some State witnesses. Accused also disputes the evidence that Nicky was present and that he witnessed the stabbing incident as claimed by him and others.

[16] In his plea explanation accused said that only after Titus's companion (Thimbonde) had pulled the screw driver from the trunk and was coming towards him, he realised that his life was in danger *and took the knife out of his pocket*. It was only thereafter that the deceased "walked into the knife". Contrary thereto, he testified that *after the deceased was stabbed* he noticed Thimbonde approaching with the screw driver. He went on and confirmed that the screw driver was only pulled from the trunk *after* the deceased had been

stabbed and that he took out his knife to defend him against Titus, not Thimbonde. He was swinging the knife from side to side in front of him and after Titus got hurt he retreated, giving the accused time to run away – even before Thimbonde could do anything. During the cross-examination of Titus, defence counsel had put it to him that the reason why the accused stabbed or scratched Titus was because *he **thought** that Thimbonde would use the screw driver.* This also differs from the two abovementioned versions. If Thimbonde only took possession of the screw driver *after* the deceased had been stabbed, then this begs the question why the accused in the first instance resorted to his knife – to defend him against Titus who was unarmed, posing no real threat to him at that stage? In view thereof, can the accused rely on private defence as a ground of justification?

[17] Despite having raised this defence, the burden of proof remains on the State to show beyond a reasonable doubt that the accused did not act in self defence and that his actions, in respect of both charges, were unlawful.

[18] On count 1 the accused stands charged with murder read with the provisions of the Combating of Domestic Violence Act, 2004 ('the Act') which, on Mr *Lisulo's* submissions, is solely based on the ex-love relationship between the accused and the deceased; which, on the strength of the State's case, was terminated at some stage prior to the commission of the offence. It was contended that the provisions of the Act still find application particularly because of the provisions set out in subsection 2, referring to a "past love

relationship". A domestic relationship is defined in s 3 of the Act in the following terms:

"For the purposes of this Act a person is in a "domestic relationship" with another person if, subject to subsection (2)-

.....

(f) they, being of different sexes, are or were in an actual or a perceived intimate or romantic relationship."

Subsection 2 reads:

"Subject to subsection (3), where a "domestic relationship" is based directly or indirectly on past marriage or engagement, past cohabitation or any other past intimate relationship, the "domestic relationship" continues for one year after the dissolution of the marriage or engagement, the cessation of cohabitation or the end of any other intimate relationship, but, where a child is born to any couple, their "domestic relationship" continues throughout the lifetime of that child or for one year after the death of the child."

(emphasis provided)

[19] Although evidence has been adduced by State witnesses of a past love relationship between the accused and the deceased, and an existing relationship according to the accused, none of these witnesses referred to that relationship as being *intimate*. Whereas the domestic relationship relied upon by the State in this instance is directly based on a past or terminated relationship between the parties, it would only constitute a "domestic relationship" in the context of the Act, if it had been intimate in nature and not

merely a love relationship between the parties. In the absence of such evidence, the love relationship testified upon by the witnesses in these proceedings, in my view, falls *outside* the ambit of a domestic relationship as defined by the Act; hence, it was not open to the State to invoke the provisions of the Act in circumstances not provided for in the Act itself.

[20] The issues for determination by this Court are whether the accused's actions during which the deceased was fatally stabbed with a knife; and the injuries inflicted on the person of Titus, were indeed unlawful, as alleged by the State.

[21] I do not consider the evidence given by the witnesses Veronica and Namuthinda regarding their journey to the hostel and in whose company they were at the time, and the discrepancies in their evidence, to be material to the determination of this case. This much has been conceded by Mr *Lisulo*, appearing for the State. It seems to me that the only purpose of leading the evidence of these two witnesses was to demonstrate the accused's demeanour earlier in the day, particularly where reference was made about him uttering words to the effect that he could do whatever he felt like, even if it were to kill a teacher. Not only does the accused dispute the testimony given by the two witnesses, but I am also unable to see any connection between the events or utterances made earlier and the stabbing incidents, for if these words had indeed been spoken by the accused, it clearly was not directed at any of the victims serving as a premonition to any one of them. In the

circumstances, the evidence given by the witnesses Veronica and Namuthinda, deserves no further consideration and can safely be ignored.

[22] How a court ought to approach a criminal case on fact where there is a conflict of fact between the evidence of the State witnesses and that of the accused was stated in the oft-quoted case of *S v Singh*¹ where the learned judge says the following at 228F-G:

“It is quite impermissible to approach such a case thus: because the court is satisfied as to the reliability and the credibility of the State witnesses that, therefore, the defence witnesses, including the accused, must be rejected. The proper approach in a case such as this is for the court to apply its mind not only to the merits and the demerits of the State and the defence witnesses but also to the probabilities of the case. It is only after so applying its mind that a court would be justified in reaching a conclusion as to whether the guilt of an accused has been established beyond all reasonable doubt.”

[23] In *S v Chabalala*², Heher AJA in the same vein stated the following:

“The correct approach is to weigh up all the elements which point towards the guilt of the accused against all those which are indicative of his innocence, taking proper account of inherent strengths and weaknesses, probabilities and improbabilities on both sides and, having done so, to decide whether the balance weighs so heavily in favour of the State as to exclude any reasonable doubt about the accused's guilt. The result may prove that one scrap

¹ 1975 (1) SA 227 (N)

² 2003 (1) SACR 134 (SCA) at 140a-b

of evidence or one defect in the case for either party (such as the failure to call a material witness concerning an identity parade) was decisive but that can only be an ex post facto determination and a trial court (and counsel) should avoid the temptation to latch on to one (apparently) obvious aspect without assessing it in the context of the full picture presented in evidence.”

See also: *Sakusheka and Another v Minister of Home Affairs*³ where the Court, faced with two mutually destructive versions, adopted the *dictum* from *Stellenbosch Farmers' Winery Group Ltd and Another v Martell et Cie and Others*.⁴

[24] In my evaluation of the evidence adduced *in casu*, I shall adopt the approach set out in the aforementioned cases.

[25] As regards the events surrounding the stabbing incidents there are two opposing versions namely, the evidence given by Thimbonde, Nicky and Titus, opposed to the accused's version. Ms *Mainga* highlighted discrepancies in the evidence of the respective State witnesses and submitted that these were material. Furthermore, that the witnesses were bias as the deceased was either related to them or a friend; hence, their evidence stands to be rejected in favour of the accused's version. Mr *Lisulo*, on the contrary held the view that the discrepancies in the evidence of the State witnesses were immaterial and whereas their evidence is corroborated, compared to the accused being the only defence witness, the Court must find in favour of the State.

³ 2009 (2) NR 524 (HC)

⁴ 2003 (1) 11 (SCA) at 14I-15D

[26] The discrepancies relied on by the defence in order to discredit the State witnesses turn on the sequence in which the events took place and why Titus, who was near or at the scene, did not make the same observations as Thimbonde and Nicky. This mainly arose from Titus's evidence that he – as Thimbonde and Nicky who were walking in from of him – also heard words to the effect that the accused wanted to stab the deceased with a knife; therefore, he must have made the same observations in the circumstances. This argument loses sight of the evidence of all three State witnesses that Titus remained behind at the girls' hostel and only arrived at the tree *after* Thimbonde and Nicky. The fact that he heard the deceased speaking does not mean that he therefore had to be with the others, because it is not known how far he was behind and how loud the deceased was speaking. In these circumstances it seems quite possible that some events could have taken place in his absence – such as the complainant drawing Thimbonde and Nicky's attention to the screw driver stabbed in the tree trunk and Thimbonde removing it. This could have happened within a few seconds and thus, it is quite possible that when Titus arrived at the tree, the screw driver was already safely in Thimbonde's pocket where it remained until handed over to a teacher. It must be borne in mind that these events played out in darkness or more correctly put, in circumstances of poor visibility, except when Thimbonde had made light with his mobile phone prior to Titus's arrival. With visibility clearly impaired, one is inclined to think that in order to see what was happening between those present under the tree, they had to be close to each other. This, to a certain extent, could possibly explain minor differences in the evidence of the witnesses.

[27] After giving due consideration to the discrepancies between the evidence of the State witnesses pointed out by the defence, I am not persuaded that it impacts on the credibility of the witnesses to the extent that their evidence should be ignored as being untruthful. Given the circumstances surrounding the events and that it played out in a short period of time in which things happened in quick succession, it seems to me, that honest mistakes could have found its way into the testimony of some of the witnesses. Whether it makes their testimony unreliable remains to be considered and must be evaluated in the context of the evidence as a whole.

[28] The three State witnesses corroborate one another on material aspects of their evidence, to wit: The deceased asking the accused why she should be stabbed with a knife, which prompted them to approach the accused and the deceased standing together under a tree. When the deceased referred to the accused being in possession of a knife, he immediately thereafter took the knife from his pocket and stabbed her once; whereafter he turned to Titus and stabbed him. They also dispute allegations that Nicky was not present and that the accused came under attack from Titus who was armed with a screw driver. Thimbonde elaborated on this point saying that Titus was too young to fight the accused and that he was also too short to have stabbed the screw driver into the trunk of the tree at the height from which Thimbonde removed it. His evidence on this point remained unchallenged.

[29] The evidence of these witnesses about them going to the girls' hostel together in order to collect food (maize) and that Titus remained behind, was not challenged by the accused. It was not suggested to any one of the witnesses that they had gone there in search of the accused and to sort him out for having a love relationship with the deceased, the sister to Titus – as speculated on by the accused. This would imply that Titus had armed himself with a screw driver beforehand and teamed up with Thimbonde to assist him. In these circumstances one would have expected that Thimbonde would also have armed himself with some weapon to either use against the accused or to defend himself with, should it become necessary. Clearly, this was not the case. Had that been their plan of action, then it defeats all logic as to why they parted company and Thimbonde going out in front, instead of them sticking together. It is furthermore clear that the witnesses by chance came upon the accused and the deceased standing under the tree; it did not come as a result of any search conducted for the accused by them. They were standing in the dark about 5 metres from the road the witnesses were on and it was only when the complainant asked the accused why she had to be stabbed that their attention was drawn to the couple. It seems to me reasonable to accept that something must have happened, not only drawing their attention, but which prompted them to go closer – for instance, something like the deceased has said about her being threatened.

[30] It is the accused's case that Nicky was not present at any stage of the events taking place that evening. I can think of no reason why he would place himself at an unknown murder scene and fabricate evidence just because he

was related to the deceased. I consider such conduct to be most improbable. I can find no reason to reject the corroborated evidence of three State witnesses saying that Nicky was present; neither has it been shown through cross-examination that they were fabricating evidence in this regard. On the State version there was a reason why Nicky was with Thimbonde at the time – having come to the hostel to collect food – and despite the accused’s blunt denial, there is nothing showing otherwise. I accordingly find that Nicky was indeed present at the time and thus in a position to make his own observations of the stabbing incident.

[31] The defence’s criticism pertaining to the credibility was particularly levelled against Titus, who was made out to be the attacker. Besides the reasons already mentioned about the State witnesses meeting with the accused by chance, the only reason the accused could come up with as to why Titus would attack him (on sight), was because of the love relationship the accused had with his sister. When questioned on how he came to that conclusion, he explained that it was what he *thought* could be the reason. Clearly there is no merit in that contention and neither was this put to the witness when he testified. The alleged attack by Titus on the accused would thus lack motive. There are also other factors which tend to reduce the possibilities of Titus launching such an attack on the accused. Firstly, he was two years younger than the accused, aged 15 years, and although both must have grown somewhat from then to now, it is clear from their appearances in Court that Titus is also of smaller build than the accused. This was in fact pointed out by Thimbonde who, during his testimony, said that Titus was still

too young to fight and not tall enough to reach the screw driver where it was stabbed into the tree trunk. Secondly, it seems to me most unlikely that a young boy of that age would have the courage to fight an older boy armed with a knife and who had already injured another by stabbing the deceased. Not only did he try to punch the accused swinging the knife in front of him from side-to-side, but then tried to tackle him, opening up his back and upper-body to his knife-swinging opponent. Again, according to the accused, Titus had walked into the knife – like the deceased did – resulting in the “scratch” injury to the right upper arm. The injury sustained by Titus is, according to the medical report and evidence given by Dr Ncomazi, a far cry from being a “scratch” and neither does it support the accused’s version as to the manner in which it was inflicted.

[32] The accused in Court demonstrated the manner in which he held the knife the time the deceased, as well as Titus, were stabbed. I did not find the demonstration supporting the accused’s version on this point convincing, because the blade of the knife, which had lost its spring action, kept on closing as it swung sideways in front of him, obviously reducing the chances of someone “walking into the open blade” accidentally. It seems to me, even where two persons would “walk into the knife” accidentally (as claimed by the accused), that the injuries sustained in the process, in all probability, would be less serious than what has been inflicted on the victims in the present instance. Other factors such as the shape of the blade and the force of the impact would obviously play a role, but in this instance the depth of the stab wound inflicted to the deceased’s body exceeds the length of the blade. This

could only have been brought about by the application of severe force; something I find to be highly unlikely of a person going forward putting his/her arms around another in an embracing manner.

[33] I have already alluded to the contradicting versions given by the accused as to why he took the knife from his pocket. Despite saying in his plea explanation that the knife “unfortunately opened”, he demonstrated in Court how he intentionally opened it in a throwing motion and testified that it was at this stage that the deceased embraced him. On the latter version there is nothing suggesting that the knife opened “unfortunately” as he *deliberately* opened it in order to use it in his defence against Titus. At that stage Titus had punched him on the nose and they were exchanging blows; which seem to fall far short of a life threatening situation. Although the impression was gained from his plea explanation that the main reason why he decided to resort to his knife was because Thimbonde had pulled the screw driver out of the tree and posed a threat to him, a different picture emerged during cross-examination where he said that it was only *after* the deceased had been stabbed that he saw Thimbonde with the screw driver whilst coming towards him, but that he managed to run away before he could reach him. Besides it being contradictory, the explanation has a hollow ring to it, because on his own version, the tree was immediately behind him where the screw driver was stuck in and there would have been no need for Thimbonde to “approach him with the screw driver” as they were at all times at arms length from one another. Hence, he could have been stabbed from behind if that was Thimbonde’s intention.

[34] From the above, it is clear that the accused contradicted himself on crucial aspects of his evidence and on his own version, he took the knife from his pocket to frighten away Titus by swinging the knife side-ways in front of him. He did not say that he intentionally inflicted any injury on Titus whilst acting in self-defence; on the contrary, besides holding the knife in front of him, there was no defensive act on his part as, according to him, Titus had punched into the knife and thereafter moved into it. On these facts, private defence finds no application. The accused's testimony simply does not measure up to his earlier plea explanation about him having *acted* in private defence.

[35] It is common cause that the accused at the time when the deceased was stabbed, realised that she had been injured but did not go to where she was. The reason, he said, was that he foresaw the possibility that he again would come under attack. In these circumstances one might have expected from the accused to look for help or to make a report to someone in authority explaining the predicament he had found himself in and the unfortunate result; instead of running away. I find it difficult to associate such conduct with innocence; neither did he use the first opportunity given to him to explain his innocence to the police when charged. It is not suggested that he was under any duty to do so, but that was the first opportunity he had to exculpate himself. When he pleaded to a charge of murder, he claimed to have acted in private defence. Once again, that was not supported by his evidence, as Ms

Mainga rightly submitted; private defence finds no application in respect of the murder charge.

[36] After due consideration of the totality of the evidence, the question the Court must now decide is whether the accused's version is reasonably possibly true?⁵ I have come to the conclusion that it is not, and the accused's explanation pertaining to the circumstances surrounding both stabbing incidents is accordingly rejected as false beyond a reasonable doubt. I am convinced that the State succeeded in proving the accused's guilt in respect of both charges, satisfying the test of proof beyond reasonable doubt.

[37] What remains to be considered is whether the accused had the required intent when committing both crimes. Whereas the Court rejected the accused's version of his stabbing of the deceased and Titus, the Court has to infer the accused's intention from evidence relating to his outward conduct at the time; as well as the circumstances surrounding the events. The test is a subjective one and in order to decide by means of inferential reasoning what the accused thought or foresaw when committing the prohibited acts, the Court looks at objective factors such as the type of weapon used; at which part of the body the attack was directed; the nature and seriousness of the injury inflicted and the objective probabilities of the case.

[38] As regards the murder charge the accused made use of a pocket-knife of which the blade length is 8.5 cm which he directed at the chest of the deceased. The upper body of a human being is undoubtedly vulnerable to

⁵*R v Difford*, 1937 AD 370 at 373; *S v Haileka*, 2007 (1) NR 55 (HC); *S v Naftali*, 1992 NR 299 (HC)

penetrating wounds as the majority of vital organs are situated in this aspect of the human anatomy. In the present instance medical evidence shows that the knife penetrated the left side of the chest, passed through the left lobe of the lung and perforated the heart. The depth of the wound is given at 10 cm, which exceeds the actual blade length of the knife and as was argued by Mr *Lisulo*, in my view correctly so, the only logical inference to be drawn from these facts is that it required substantial force to inflict an injury of that nature to the person of the deceased. When considered together with the evidence about the deceased's question to the accused as to why she had to be stabbed with a knife and his conduct subsequently, the facts point to and support the inference that the accused had acted with direct intent when he stabbed the deceased. I accordingly so find.

[39] Pertaining to count 2 the position is the same. The accused used the same knife to inflict a deep stab wound to the upper arm of his victim, albeit not life threatening. He thereafter tried to stab Titus in the face but was unsuccessful as the blow was blocked, resulting only in a cut/bruise to the finger. In these circumstances, there can be no doubt that the accused at the time acted with the intent to cause grievous bodily harm to the person of Titus.

[40] In the result, the Court finds the accused guilty on:-

Count 1: Murder

Count 2: Assault with intent to do grievous bodily harm

LIEBENBERG, J

ON BEHALF OF THE ACCUSED

Ms I Mainga

Instructed by:

Inonge Mainga Attorneys

ON BEHALF OF THE STATE

Mr D Lisulo

Instructed by:

Office of the Prosecutor-General