

**REPUBLIC OF NAMIBIA**



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK**

**SENTENCE**

Case No: CC 11/2012

In the matter between:

**THE STATE**

and

**GERSON URI-KHOB**

**ACCUSED**

**Neutral citation:** STATE *v* URI-KHOB (CC 11/2012) [2013] 137 NAHCMD (21 MAY 2013)

**CORAM:** NDAUENDAPO J

**Heard:** 16 April 2013

**Delivered:** 21 May 2013

**Flynote:** Sentencing—Accused convicted of murder with *dolus directus* and common assault—Factors to be taken into account—First offender and expressed remorse—Accused and deceased husband and wife—Aggravating—Sentenced to 30

years imprisonment on the murder count and 1 year on common assault—Sentence on common assault to run concurrently with the sentence on murder.

**Summary:** Sentencing—The accused was convicted of murdering his wife with *dolus directus*—And common assault—At the age of 52 accused first offender and expressed remorse. Deceased stabbed 8 times and it is aggravating that accused and deceased were involved in a domestic relationship—sentenced to 30 years imprisonment on murder and 1 years on common assault. Sentence of 1 year to run concurrently with the sentence of 30 years on murder.

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### ORDER

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1. Count one, murder with direct intent, 30 years imprisonment.
2. Count two, common assaults, 1 year imprisonment. The sentence on count two is ordered to run concurrently with the sentence on count one.

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### JUDGMENT

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NDAUENDAPO J [1] This court convicted the accused of one count of murder with *dolus directus* and one count of common assault.

A summary of the facts in this case is as follows: The accused and the deceased were involved in a domestic relationship in that they were married to each other and had children together.

On 11 February 2011 and at their residence at Erf 1263 Freedomland Street at Goreongab dam in the district of Windhoek the accused hit the deceased with a piece of iron over her body. When the complainant in count 2 came to the assistance of the

deceased, the accused hit her with the piece of iron on her mouth and she sustained open wound on her lip. After being hit with the iron pipe, the deceased fled into the house and the accused pursued her and stabbed her eight times with a knife. She died as a result of stab wound(s) she sustained to her neck.

[2] It is now my duty to sentence the accused for the crimes he was convicted of.

In terms of our law there are three factors that play a role when it comes to sentencing namely, (a) the personal circumstances of the accused, (b) the nature of the crime and (c) the interest of society. See: *S v Zinn 1969 (2) SA 537 (A) at 540 G*.

At the same time, the sentence to be imposed must satisfy the objectives of punishment which are (1) prevention of crime (2) deterrence or discouragement of the offender and would be offenders, (3) rehabilitation or reform of the offender and (4) retribution by the imposition of appropriate punishment for the offence committed. The sentence must also be blended with a certain measure of mercy.

### **Personal circumstances**

[3] The accused testified that he is 52 years old. He is a welder and painter by trade. He was earning between N\$3000-4000 pm. He did not attend school. He has 3 children with the deceased, their ages being 23, 15 and 13 respectively. He has other 2 adult children from his previous relationship. The accused is a first offender. He told the court that he does not feel good about what he did and that he is asking for forgiveness for what he did.

[4] Submissions by defense counsel

Counsel submitted that the accused pleaded guilty and at his age (52), he has no previous conviction. The accused was angry because the deceased used his money to entertain other men. Counsel argued that the accused has shown remorse and asked for forgiveness.

[5] Submissions by counsel for the State

Counsel submitted that the deceased died at the hand of her own husband. She was 41 years old and the mother of 3 children who must know grow up without the care and love of their mother. She contended that the Court should not show leniency towards him as he showed none to the deceased. He not only assaulted her first, but when she fled, he followed her and stabbed her 8 times. She was attacked because the accused was angry over the N\$300 that she took and apparently spent on other men.

[6] In *S v Walter Caorlse and Another* case no CC 1/2010 Damaseb JP said the following:

*'In callous murder such as the ones under consideration, an exemplary sentence is called for in order not only to reflect the shock and indignation of interested person and of the community at large, but also to serve the deterrent as well as just retribution objectives of punishment'.*

[7] The crime of murder is indeed a very serious crime. The killing of women (the most vulnerable members of our society) by their husbands and boyfriends has reached endemic proportions in our society. It is very prevalent and despite heavy sentences, it continues unabated. Society is sick and tired of men who resort to this heinous conduct as a way of expressing their anger, disapproval and/or disappointment when their relationships with women do not work out.

The deceased met her death in a most brutal and barbaric manner. She was not only assaulted with an iron pipe, but when she fled, the accused pursued her into the house and butchered her with a knife. She was defenseless and he stabbed her 8 times.

[8] The deceased was 41 years old when she died and the mother of 3 minor children. She was still in the prime of her life and 3 children must now face the world without the care and love of their mother.

The death of the deceased was senseless and apparently because she took N\$300 of the accused and she spent it on other men. There is no evidence that she spent it on other men. Even if that is the case, that was no justification whatsoever for the accused to beat her with the iron pipe and then stabbed her to death. The accused and the deceased were husband and wife and they were involved in a domestic relationship. That is an aggravating factor that the court must take into account. The accused expressed remorse for his conduct and the court also observed that when he came and testified. The court also takes into account that the accused at his age, 52 years old, is a first offender.

In *S v Ronny Naobeb* case no CC 26/2006 an unreported judgment of Mainga J (as he then was) said that:

*“Every law abiding citizen is shocked to the core at the rate of murders and rapes especially of defenseless women and children and the brutality and callousness that accompany them”.*

In *R v Karg* 1961 (1) SA 231 A at 236 B Schreiner JA remarked as follows:

*“It is not wrong that the natural indignation of interested persons and the community at large should receive some recognition in the sentences that courts impose, and it is not irrelevant to bear in mind that if sentences for serious crimes are too lenient, the administration of justice may fall into disrepute and injured persons may incline to take the law into their own hands”*

In *S v Motolo en ‘n Ander* 1998 (1) SACR 206 (OPD) the court held that: (headnote)

*“In case like the present the interests of society is a factor which plays a material role and which requires serious consideration. Our country at present suffers an unprecedented, uncontrolled and unacceptable wave of violence, murder, homicide, robbery and rape. A blatant and flagrant want of respect for the life and property of fellow human beings has become prevalent. The vocabulary of our courts to describe the barbaric and repulsive conduct of such unscrupulous criminals is being exhausted. The community craves the assistance of the courts: its members threaten, inter alia, to take the law into their own hands. The courts impose severe sentences,*

*but the momentum of violence continues unabated. A Court must be thoroughly aware of its responsibility to the community and by acting steadfastly, impartially and fearlessly announce to the world in unambiguous terms its utter repugnance and contempt of such conduct."*

Although a South African judgment, what is expressed in there is equally apposite in our country. I fully associate myself with the sentiments expressed therein and I hope that the sentence I impose will send a clear message that the courts will severely punish those who commit serious crimes such as the one under consideration.

[9] In the result the accused is sentenced as follows:

1. Count one, murder with direct intent, 30 years imprisonment.
2. Count two, common assault, 1 year imprisonment. The sentence on count two is ordered to run concurrently with the sentence on count one.

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**G N NDAUENDAPO**

**Judge**

**APPEARANCE  
FOR STATE**

**B WANTERNAAR  
OFFICE FOR THE  
PROSECUTOR-GENERAL**

**FOR ACCUSED**

**MR VISSER  
OF STERN & BERNARD LEGAL  
PRACTITIONERS**