



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

Case No: CC 18/2012

THE STATE

versus

ELIAS NGHIIKOVALI LUKAS

Neutral citation: *S v Lukas* (CC 18/2012) [2013] NAHCMD 313 (1 November 2013)

Coram: SHIVUTE, J

Heard: 16 – 31 July 2013

Delivered: 1 November 2013

Fly note: Criminal law – Intention to kill – Direct intent – Inference as to cumulative impact of accused’s conduct – Nature of weapon used – Position where injuries directed – Number of injuries and nature of wounds sustained.

Summary: Criminal law – Intention to kill – Direct Intention - Intention is a state of mind which can be inferred from the circumstances regarding each case. The court will have to look at the cumulative conduct of the accused, the nature of the weapon used together

with the position on the body where the injuries were directed and the number of times the accused inflicted the injuries.

VERDICT

Accused guilty of murder with direct intent.

JUDGMENT

SHIVUTE J:

[1] The accused person faces an indictment containing one count of murder. It is alleged that during 16 -17 December 2010 at or near Otjiwarongo in the district of Otjiwarongo the accused did unlawfully and intentionally kill Malakia Matias an adult male person.

[2] The accused pleaded not guilty to the charge. He maintained that he was acting in self-defence and disclosed the basis of his defence as follows:

"I met the deceased who was in the company of Berlinda Naoses on the street in front of the house of Berlinda's mother. I was walking from the opposite direction. At the point where we met the deceased called me a "moegoe". [According to the accused's legal representative, a "moegoe" means useless person]. We confronted each other. The deceased hit me with a fist on the face. I was hurt and fought back. The deceased drew a knife and aimed that knife at me. I blocked a possible stab and in the process I sustained a cross cut on my index and middle fingers. When I realised that the deceased attacked me with a dangerous weapon, I decided to repel him. I immediately drew a knife and stabbed him on his chest. I cannot recall how many times I stabbed the deceased. Subsequent thereto the deceased turned around and fled. I then

chased him and caught up with him. I further stabbed him on the back and stopped. Again I cannot recall how many times I stabbed him on his back because I had an overwhelming anger after he attacked me without any reason.”

[3] Ms Ndlovu appears on behalf of the State and Mr Ipumbu represents the accused on the instructions of the Directorate of Legal Aid.

[4] The accused further made formal admissions as follows:

The knife that was used to kill the deceased belongs to the accused. On the fateful night, the accused found Ms Naoses at Etambi Bar in Otjiwarongo. On the same night the accused also visited Ms Berlinda Naoses' mother's house twice before and after he visited Etambi Bar. The accused and Berlinda Naoses have a son together. The accused further admitted that he voluntarily took the police to the place where the knife was hidden. The accused does not dispute the identity of the deceased, the date when the incident took place as well as the place where the incident happened.

[5] I will now proceed to summarise the evidence starting with that of State witnesses. Dr Joseph Joshua David Saka Bulaya who conducted a post-mortem examination on the deceased read through the report he compiled. The chief post-mortem report findings were left lung injury, 3 millimetres wide and 4 millimetres deep. There was haemothorax of about 70 millimetres. Liver injuries 4 millimetres and 6 millimetres for the deep stab wounds on the chest. Four stab wounds on the right chest and two on the left. In the abdomen right hypochondria a stab wound 6 millimetres deeper in the liver. Right upper hip: 5 millimetres x 05 millimetres. Right arm 3 millimetres x 1 millimetre. Back below right shoulder 5 millimetres x 3 millimetres. According to Dr Bulaya, the causes of death were liver injury, lung injury and multiple stab wounds. The doctor testified that although the injuries sustained are indicated in millimetres in the post-mortem report, they should read as centimetres and not millimetres. The report was admitted in evidence and marked as exhibit "C". The deceased had a total of 11 stab wounds.

[6] Sergeant Robert Karondore testified that he attended to the scene of crime at about 03h00 in the morning and took photographs of the deceased and compiled a report. The points indicated in the report were pointed to him by Berlinda Naoses except point 7 that was his own observation. The photo plan was admitted in evidence as exhibit "A". According to Sgt Karondore, when he took photographs at the scene of crime it was dark. However, he used the motor vehicle's lights in order for him to see.

[7] Warrant officer Harry Hoab testified that on 17 December 2010 the accused pointed out a knife to him that was used to stab the deceased and he photographed the knife and compiled a photo plan that was admitted in evidence as exhibit "F".

[8] Inspector Hendrick Kharuxab testified that he formally arrested the accused and the accused led him to a place where a knife exhibit "1" was recovered. According to him exhibit "1" was a big hunting knife similar to the knives used in butcheries. The knife has a handle designed for a better grip so that it does not slip from the hand.

[9] Berlinda Noases, to whom I shall refer by the first name to distinguish her from another State witness with the same surname, testified that she has a minor son with the accused. However, their relationship had ended before this incident. On 16 December 2010 she was at Etambi Bar with the deceased. Whilst she was there the accused came and said he wanted to talk to her. Berlinda replied that if the accused wanted to talk to her then the deceased should also be present. The accused was a bit aggressive. The witness sent a message to Sgt Neliwa that the accused had come to her and he wanted to talk to her privately. Sgt Neliwa arrived after the witness had sent him an SMS. When Neliwa arrived at the bar he found the accused sitting separately from Berlinda. Sgt Neliwa left. The witness testified that at one stage whilst she was at Etambi Bar she observed the accused and the deceased hugging each other.

[10] The witness and the deceased left Etambi Bar and went to another place. From there she was accompanied by the deceased to her mother's house. Whilst

she was in her mother's yard, she told the deceased to wait until she had fetched the child from the main house and had entered her room. She instructed the deceased to leave after she had locked the door. However, before she entered the main house she saw the accused and inquired from him what he was doing. He replied but she did not hear what he said. The accused came towards the witness. The deceased told him to stand still and talk to the lady. From there the accused and the deceased spoke in their language which the witness did not understand.

[11] The witness entered her mother's house and her mother asked her to whom she was talking. She informed her that she was talking to the accused. Her mother came outside the house and asked the accused what he was doing at her house. The accused and the deceased picked up a quarrel. That time the deceased was leaning against the fence and the witness was behind him. She observed the deceased running away and the accused drawing out a knife. If I understand the evidence of this witness correctly on this aspect, she testified that the deceased ran away before the accused drew the knife.

[12] However, the witness' mother, Ms Hilda Naoses, testified that when Berlinda entered the house she confronted Berlinda about her drinking habits and Berlinda immediately went out. She heard her talking to a person and she inquired with whom Berlinda was talking and she replied that she was talking to Elia, the accused. Ms Naoses went out of the house and found the accused and the deceased standing inside the yard. The witness asked the accused what he was doing in her yard.

[13] The accused and the deceased were quarrelling. They were advancing towards each other. She observed the accused taking a knife from the back of his pants and the deceased fleeing. The witness observed that the knife was black in colour. Both Berlinda and her mother testified that they did not observe any fight between the deceased and the accused whilst they were in the yard. Both witnesses were able to observe the incident clearly because there was light from the street in the corner. None of them saw the deceased hitting the accused or drawing a knife against the accused.

[14] Both witnesses testified that the deceased ran towards the gate and the accused pursued the deceased. Ms Naoses further testified that when she saw the deceased running away, she screamed. She entered one Rachel's house and asked her to call the police. When she came out of Rachel's house, she observed the accused entering her house wearing one shoe and still holding the knife. The accused was coming from the direction where he had chased the deceased and was going to the witness' yard to pick up his shoe. Ms Naoses saw the accused picking up one shoe from her yard. She told the accused to leave her yard. She then went to the direction where the deceased ran to and saw the deceased lying in a pool of blood. She screamed for help.

[15] Mr Christian Mukuyu testified that on the date in issue whilst he was sleeping his dog started barking continuously. He woke up to check why the dog was barking. He went to his son's room and stood at the window. He observed two men chasing each other. The man who was being chased fell down. The person who was chasing him sat on him with his arm moving. Mr Mukuyu went outside the house and put on the light and walked towards the place where the two men were. The man who was on top of the other ran away. The witness went close to the place where the man was lying and he recognised him as the deceased who was lying in a pool of blood. The witness knew the deceased before. The person who was chasing the deceased went back to the direction where they came chasing each other and entered a yard.

[16] Christeline Mwandia testified that she recorded a statement from Berlinda Naoses. They were communicating in Damara language and she recorded the statement in English. After she recorded the statement, she translated the content in Damara language and after she agreed with the content she signed it. However, this is contrary to Berlinda's assertion that the statement was not read back to her.

[17] Sergeant Linus Neliwa testified that on 16 December 2010 he saw Berlinda in the company of the deceased at Etambi Bar between 19h00 and 20h00. The witness was in the company of his wife. He talked to Berlinda and she told him that her ex-boyfriend, the accused, was around but he did not show any negative

reaction. The witness said if the accused did not approach her, he did not see any problem with that. The witness did not see the accused at that time. It was further Sergeant Neliwa's evidence that when he went to Etambi Bar he did not go there because he was called by Berlinda but he went there for other purposes. The witness testified again that on 15 December 2010 he met Berlinda, the accused and a certain man at his office. There was a problem between Berlinda, the accused and that man. The problem was that accused was alleging that that man was Berlinda's boyfriend and the accused allegedly sent text messages to that man.

[18] Sgt Neliwa continued to testify that early in the morning of 17 December 2010 he received two text messages from Berlinda at around 01h00. The first one read as follows: *"Is that your new boyfriend? You know I am not okay with that nonsense for the sake of our son."* The second message said: *"He is here, he wants to cause problems, come please I am at Etambi bar."* Thereafter Berlinda phoned and told Sgt Neliwa what was going on but he did not take her seriously. He advised her to go home. At about 02h00 he received another telephone call from Berlinda informing him that the accused had stabbed the deceased to death.

[19] Neliwa and his wife drove to the scene. He found the deceased lying in a pool of blood. He checked the deceased's pulse but there was no pulse. The body was getting stiff and he concluded that the deceased was dead. He called the police from the Scene of Crime Unit. When they arrived Sgt Neliwa searched the deceased's body and found a wallet in the deceased's pocket. They also searched the place where the deceased was found and the area in the vicinity including Ms Noases' house but they did not find any object to be connected to the commission of the crime. Sgt Neliwa testified that they were able to search the scene of crime because there were three street lights in the vicinity each with six bulbs and the lights of his vehicle were also on.

[20] The body was removed from the scene to the hospital for the deceased to be certified dead by a doctor. Sgt Neliwa went back to the scene around 07h00 and searched it again. He observed the footprints of a person who was running inside the yard of Ms Naoses' house. The footprints ran up to the place where the body

was found. According to him, there were two pairs of footprints that ran up to the place where the body was found. It was again Sgt Neliwa's evidence that the body did not sustain injuries from the place where it was found to the hospital. Sgt Neliwa confirmed that he went with other police officers to the place where the accused hid the knife with which he used to stab the deceased and the accused pointed out the knife to them. Sgt Neliwa again testified that he observed injuries on the accused's fingers and the accused explained to him that he picked up the injuries when he came into contact with the deceased at the house of Berlinda's mother.

[21] The accused on his part gave evidence under oath and called no witnesses. He testified that he and Berlinda Naoses had a son together but their relationship had ended before this incident. He disputed that on 15 December 2010 he was at the police station. However, he testified that on 16 December 2010 he went to the house of Berlinda's mother but Berlinda was not at home. His reason to go there was to give Berlinda money for the maintenance of his son. On his way from that house, he passed at Etambi Bar where he found Berlinda. He approached her and asked for his son. Whilst he was talking to Berlinda the deceased pushed him and asked what he was doing with Berlinda. The deceased further insulted him that he was useless. Berlinda and the deceased went outside. After a few minutes the accused decided to go home. He found the deceased and Berlinda outside Etambi Bar. The deceased continued to insult him repeating what he had already said earlier. The deceased pushed the accused again. The accused left for another bar until midnight.

[22] From there the accused went to Berlinda's place in order to give her money for the child but he did not find her at home. On his way out of the yard, he met Berlinda and the deceased. The deceased insulted him and pushed him on the chest. The accused got angry and pushed the deceased. This took place at the entrance of the yard. As they were pushing each other, the deceased hit the accused with a fist on the chin. The deceased drew a knife and aimed it at the accused. The accused blocked it with his hands and he sustained injuries on his finger on the left hand. The accused drew his knife exhibit "1" and stabbed the

deceased on the chest. After the first stab the deceased ran away. The accused ran after the deceased and caught up with him and he stabbed him on the back and in front. He could not recall how many times he stabbed him. The deceased screamed and the accused stopped and left the scene. Whilst he was stabbing the deceased he did not foresee that he was going to kill the deceased. The accused further testified that at the time of the commission of the offence he was wearing takkies and not sandals as depicted in the photograph when he went to point out the knife.

[23] The accused disputed that he ever went back to Berlinda's house to pick up a shoe that fell from his foot after he had stabbed the deceased. He further disputed that he met the deceased and Berlinda inside the yard. He testified that he met them at the entrance. The accused denied having sent text messages to Berlinda on 17 December 2010. Through cross-examination, the accused said that Berlinda and her mother were present when the deceased wanted to stab him with a knife and Berlinda's mother tried to stop the fight. The accused again through cross-examination conceded that when he chased the deceased his life was not in imminent danger and that he instead only acted out of anger.

[24] Having summarised the witnesses' evidence I will proceed to deal with counsel's arguments. I will start with the arguments of State counsel. Counsel for the state argued that the deceased and the accused started to argue in the yard and the deceased upon seeing the knife ran away and the accused chased him. When he caught up with him he stabbed him several times. Counsel further argued that if the deceased had a knife, it was going to be found at the scene or around the vicinity. According to counsel, the accused was not defending himself, because at the time he was chasing the deceased he was not under imminent danger. For the accused to stab the deceased around the chest 7 times he had the intention to kill the deceased, so counsel argued. The depth of the wounds that were about 6 cm into the liver and 4 cm into the lungs is an indication that the accused used force to inflict those injuries. Counsel for the State again submitted that the accused's intention to kill the deceased can be inferred from his conduct by stabbing the

deceased with a big hunting knife 11 times; running away after having done so, and leaving him in a pool of blood.

[25] Counsel argued that the accused did not meet with Berlinda and the deceased in the street but he was waiting for them at Berlinda's residence. Counsel further argued that the accused sent the text messages to Berlinda because he was jealous of Berlinda's friends although the relationship between the accused and Berlinda had already ended. I was referred to a case on private defence and have considered it when deciding this matter.

[26] With regard to discrepancies in Berlinda's testimony counsel argued that Berlinda might be mistaken concerning the fact that the deceased ran away before the accused drew a knife. She urged the court to accept the version of Berlinda's mother that the accused first drew the knife and thereafter the deceased ran away. Concerning the inconsistency in the testimonies of Berlinda and police officer Mwandu whether or not her statement was read to her, the discrepancy such as the size of the knife, amongst other things, was to the accused's advantage because Berlinda testified that she never said that it was a big knife. Counsel referred me to an authority concerning how witnesses' statements may differ from their evidence in court which I have also considered.

[27] On the other hand counsel for the defence criticised the evidence given by Berlinda that Sgt Neliwa went to Etambi Bar after he received a message from her and that when he arrived there Berlinda pointed out the accused to him and Neliwa saw the accused seated separately from her. Counsel continued to argue that these aspects were contrary to Sgt Neliwa's version who said that he did not go to the bar because he received a message and that he did not see the accused. I will not rely on Berlinda's version that Sgt Neliwa went to Etambi Bar because he was called there by Berlinda and that she pointed the accused to Sgt Neliwa because Berlinda could have been mistaken in this respect. However, although Sgt Neliwa did not go to Etambi Bar because he was called and that he did not see the accused, the fact remains that Sgt Neliwa was at the bar minding his own business. Whilst there he saw Berlinda and the deceased sitting together and Berlinda informed him that the

accused was present at Etambi Bar but that he did not bother her. Counsel for the defence argued that Berlinda's version that he saw the accused and the deceased hugging each other is inconsistent with the fatal stabbing that took place later. Counsel further argued that Berlinda's version that the deceased ran away before the accused drew a knife was consistent with the accused's version that it was the deceased who first struck the accused with a fist on the chin. I do not see how Berlinda's version that the deceased ran away before the accused drew a knife to be consistent with the assertion that the deceased assaulted the accused first on the chin. I therefore do not agree with counsel's argument that the two versions are consistent. Counsel argued that because of Berlinda's inconsistent evidence she could not be said to be a truthful witness and that her evidence should not be relied upon.

[28] Counsel submitted that the accused acted in private defence and it could not be said that he exceeded the bounds of private defence. The accused was first attacked by the deceased with a fist. Thereafter the deceased took a knife with the intention to stab the accused and the accused warded off the imminent attack by stabbing the deceased once in the chest. Counsel argued that this evidence was not contested by the State. This contention cannot be accepted, because both Berlinda and her mother testified that they did not see the deceased attacking the accused with a knife. The only knife they saw was in the possession of the accused. The accused's evidence upon which counsel appears to rely on this aspect was displaced by the evidence of these two state witnesses and stands alone. I have no reason to doubt the evidence of the two state witnesses on this aspect. Counsel further argued that the accused testified that after the first stabbing, the deceased ran away. The accused ran after him and caught up with him and stabbed him again on the back. Counsel submitted that Dr Buraja's findings that the deceased had a stab wound on the chest was consistent with the testimony of the accused that he first stabbed the deceased on the chest as soon as the deceased drew his knife. That being so, counsel argued that that specific injury was inflicted at the height of imminent danger and at that specific stage accused acted in self defence.

[29] Counsel again argued that since Dr Buraja did not indicate whether the other fatal wound was inflicted from anterior or posterior view of the anatomical position of the deceased, counsel contended that this was a second injury that penetrated the liver and that the accused inflicted it shortly after the first one. My own view is that there is no evidence to support such a contention. As such it amounts to pure speculation and cannot therefore be accepted. The doctor was not in a position to tell the court in which sequence the injuries were inflicted and this applies to the accused as well. Furthermore, counsel argued that the doctor testified that the body was refrigerated and he could not quantify the blood lost from the injuries suffered by the deceased, therefore his suggestion that due to loss of blood hypovolemic shock might have contributed to the deceased's cause of death was not borne out by evidence. It was again counsel's argument that the accused did not foresee that by stabbing the deceased, his actions would cause the deceased's death. It was a point of criticism that the State did not prove that the accused intended to kill the deceased. Therefore, so counsel urged, he should be convicted of a lesser offence. Counsel referred me to legal principles concerning private defence to which I have had regard in coming to the conclusion in this matter.

[30] Having summarised the evidence and submissions by counsel I must now consider whether or not the State has established its case beyond reasonable doubt. It is a well-known principle that in criminal cases the State bears the burden of proof and there is no *onus* whatsoever on the accused to prove his innocence. If the State has failed to prove its case beyond reasonable doubt then the accused should be given the benefit of the doubt and is entitled to an acquittal.

[31] As mentioned before, counsel for the defence criticised Berlinda's evidence and argued that it should not be relied upon as she was not truthful. Berlinda, it will be recalled, testified, amongst other things, that the statement she gave to the police was not read back to her and this piece of evidence was contradicted by police officer Mwandu who took down her statement. Mwandu was adamant that she read it back to her after which she signed. It will be recalled that she was further contradicted by Sgt Neliwa when she testified that the sergeant went to the bar as a

result of the text message that she sent to him and when he arrived there she allegedly pointed the accused out to him. Another discrepancy in Berlinda's evidence was when Berlinda said that the deceased ran away before the accused took a knife contrary to the evidence of her mother who testified that the deceased ran away after the accused drew a knife. In my opinion Berlinda appears to have been mistaken on the above aspects. I will therefore not rely on her testimony as far as the above discrepancies are concerned. However, the fact that she was mistaken in respect of the above aspects does not mean that her entire testimony should be rejected. This is a trite principle of law.

[32] Berlinda was corroborated by Sgt Neliwa in other respects such as that they met at the bar where they spoke to each other; she forwarded text messages to him; she reported that the accused had stabbed the deceased, and as a result of her report Sgt Neliwa went to the scene. Berlinda was further corroborated by her mother when she testified that the accused and the deceased were quarrelling whilst they were inside the yard and both of them observed the accused drawing a knife. None of them saw the deceased with a knife. Their version that the accused and the deceased quarrelled whilst they were inside the yard was supported by the following reasons. Berlinda's mother was already in bed when Berlinda arrived at home. Berlinda entered her mother's house in order to fetch her son. It was at this stage when her mother scolded her about her drinking habits and heard her talking to someone else and she inquired with whom she was talking. Berlinda replied that she was talking to the accused. This prompted her to go outside but within the yard where she found the accused and the deceased quarrelling. She even asked the accused what he was doing at her house. Both Berlinda and her mother testified that whilst the accused was chasing the deceased he had a knife in his hand.

[33] Furthermore, Berlinda's mother testified that after the accused came from where he pursued the deceased, the accused came back to the yard to pick up a shoe. Her evidence was partially corroborated by Mr Mukuyu who said that when the person who was on top of the deceased ran away he went back to the direction where they came from when they were chasing each other and entered a certain

yard although he could not tell with certainty which yard he entered. Sergeant Neliwa testified that he observed running marks of footprints from the yard of Berlinda's mother's house. The footprints were observed inside the yard. As for the accused who testified that the incident took place outside the yard and that he stabbed the deceased because he wanted to attack him with a knife before he ran away, his evidence cannot reasonably possible be true for the following reasons: If it was true that the deceased was stabbed more than once before he ran away as the accused stated when disclosing the basis of his defence or that the accused inflicted first the wound on his chest that penetrated the lungs, common sense dictates that the deceased was going to bleed and a blood trail was going to be found from the place where he was first stabbed to the place where he was found dead. There was no blood trails spotted at the scene of crime by the witnesses who testified. The only blood observed is the pool of blood in which the deceased was found lying at the spot where the deceased fell. Furthermore, if the deceased had a knife obviously that knife was going to be found at the scene of crime or in the vicinity since the deceased did not leave the scene and there is no evidence that a third party was involved in the fight and might have taken the knife.

The State witnesses corroborated each other on material aspects of the case. The accused's version that the incident took place outside the yard was refuted by credible evidence of three witnesses. I had the opportunity to observe all the witnesses and the accused testifying and I am left with the impression that Berlinda's mother, Sgt Neliwa and Mr Mukuyu gave their evidence in a straight forward manner and were not shaken in cross examination. Although there were inconsistencies in Berlinda's evidence these were not material. Although the accused stuck to his version, it is clear that such version was based on a fabrication.

[34] Having found that the accused met the deceased in the yard, I should now consider the private defence raised by the accused and whether the actions of the accused have satisfied the requirements of private defence. Counsel for the defence referred me to the requirements of private defence as stated in the case of *S v Goliath* 1972 (SA) 1(A) as follows:

In order for the accused to succeed with private defence, the following requirements must be met:

- (a) the attack must be unlawful.
- (b) the attack must be directed at an interest legally deserving of protection.
- (c) the attack must be imminent but not yet completed.

I fully agree with counsel for the defence that those are the requirements for private defence and I will therefore approach this matter in the light of these requirements.

[35] The accused when stating the basis of his defence said that after the deceased assaulted him with a fist the deceased took a knife in order to stab him. The accused blocked the knife in order to repel the attack against him. As a result he was cross cut on his fingers. In order to defend himself the accused drew a knife and stabbed the deceased in the chest. He could not recall how many times he stabbed him. The deceased fled and the accused chased after him. When he caught up with him he stabbed the deceased on the back and stopped. Again he could not tell how many times he stabbed him. However, when he gave his testimony under oath, he said he stabbed the deceased on the chest. After the first stabbing the deceased ran away. The accused ran after him and caught up with him. The accused stabbed the deceased on the back and in front. He could not recall how many times he stabbed him. It is evident that the accused is contradicting himself as to how many times he stabbed the deceased before the deceased ran away and as to the sequence he stabbed the deceased. However, although the accused is alleging that he stabbed the deceased before the deceased ran away and that this was after the deceased wanted to stab him with a knife, his version cannot be reasonably possibly true in the circumstances because it was refuted by the eye witnesses. The only reasonable conclusion that could be drawn is that the accused drew the knife and when the deceased saw the knife he ran for his life.

[36] Now the only question to be resolved is, if the accused drew a knife and the deceased upon seeing the knife he fled and the accused followed him can it be said that the accused acted in self defence? Was the accused's life under imminent

danger? My answer to these questions is that at the moment the deceased ran away the accused's life was not in imminent danger. Therefore it cannot be said that the accused was acting in self-defence because he was not under unlawful attack and there was no attack directed at an interest which legally deserved to be protected. In view of this, I find that the accused had no lawful justification to kill the deceased.

[37] As to the type of intention the accused had when he killed the deceased, intention is a state of mind which can be inferred from the circumstances regarding each case. The court will have to look at the cumulative conduct of the accused, the nature of the weapon used together with the position on the body where the injuries were directed and the number of times the accused inflicted the injuries. According to this case, the accused stabbed the deceased with a hunting knife that was described as a knife that is similar to knives normally used in butcheries. I had the opportunity to look at the knife when it was produced in this court. It is a big knife and clearly a dangerous weapon. The deceased was stabbed 11 times. He suffered serious injuries and he was lying in a pool of blood as revealed by the photographs produced before this court and the nature of injuries were contained in the post-mortem report. Most of the stab wounds were directed on the vital organs of the deceased's body namely chest, liver and lungs. The accused by continuously stabbing the deceased with a lethal weapon 11 times foresaw that the deceased was going to die because of his actions. I am therefore satisfied that considering the nature of the injuries suffered, the position where they were directed, the instrument used to inflict the injuries on the deceased and the number of times he stabbed the deceased, the accused acted with direct intent.

[38] In the result, I am satisfied that the State has proved its case beyond reasonable doubt. Private defence cannot be availed to the accused. I therefore find the accused guilty of murder with direct intent.

N N Shivute
Judge

APPEARANCES

STATE : Ms Ndlovu
Office of the Prosecutor-General

ACCUSED: Mr Ipumbu
Instructed by Directorate of Legal Aid