



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

**CASE NO: CC 29/2012**

In the matter between:

**THE STATE**

**Versus**

**ELIAKIM NAMPINDI**

**ACCUSED**

**Neutral citation:** *State v Nampindi* (CC 29/2012) [2016] NAHCMD 164 (9 June 2016)

**CORAM:** SIBOLEKA J

**Heard on:** 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18 July 2014;  
21, 22, 27, 28, 29, 30 October 2015; 22, 30 March 2016;  
27 May 2016

**Delivered: on:** 9 June 2016

**Flynote:** Criminal law: Double murder- *mens rea* credibly inferred from the savage manner in which the victims were stabbed several times with a knife.

**Summary:** The male victim was stabbed and died on route to Rehoboth Catholic Hospital. The girlfriend was brutally stabbed multiple times, her stomach slit open, intestines came out. The accused left her unattended despite the clinic being only 800 meters away. Third victim viciously stabbed in the back, he dodged the second blow and ran away. Substantial force was used during the infliction of all the injuries.

Held: Guilty of double murder, *dolus directus* and attempted murder on the third victim.

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### VERDICT

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In the result the accused is convicted as follows:

Count 1: Guilty: Murder - *dolus directus*;

Count 2: Guilty: Murder – *dolus directus* read with the provisions of the  
Combating of the Domestic Violence Act 4 of 2003;

Count 3: Guilty: Attempted Murder

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### SIBOLEKA J

[1] The accused is charged with the following counts of the indictment:

#### COUNT 1: MURDER

In that upon or about 5 March 2009 and at or near Hoachanas in the district of Mariental the accused unlawfully and intentionally killed Paul Fredericks, an adult male person.

COUNT 2: MURDER READ WITH THE PROVISIONS OF THE COMBATING OF  
DOMESTIC VIOLENCE ACT 4 OF 2003

In that during the period 3-4 August 2011 and at or near Kalkrand in the district of Mariental the accused unlawfully and intentionally killed Anetta Jantjies, an adult female person.

COUNT 3: ATTEMPTED MURDER

In that during the period 3-4 August 2011 and at or near Kalkrand in the district of Mariental the accused did unlawfully and intentionally assault Salmon Rooinasie by stabbing him with a knife and/or sharp object in his back with intent to murder him.

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**SUMMARY OF SUBSTANTIAL FACTS IN TERMS OF SECTION 144(3)(a) OF  
THE CRIMINAL PROCEDURE ACT, 51 OF 1977**

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The accused and the deceased in count 1 were both at Farm Onzerust in the district of Mariental during the evening of 5 March 2009. The deceased were in the company of a group of residents/employees of the said farm in the room of Maria Kooper, drinking alcohol. The accused entered the room and demanded alcohol where after the deceased refused. An argument erupted and the deceased pushed the accused outside the room. The accused left and returned with a knife and stabbed the deceased once in his chest. The deceased died later that same evening as a result of severe internal bleeding and a collapsed lung caused by the stab wound.

The accused and the deceased in count 2 were in a romantic relationship at the time of her death. During the evening of 3 August 2011 at or near Farm Schlip in the district of Kalkrand the complainant in count 3, the deceased in count 2 and her daughter were seated at the fire when the accused approached them. He stabbed the complainant in count 3 with a knife once in his back. The accused then stabbed the deceased in count 2 in the abdomen and the upper body

several times with the same knife. The deceased died on 4 August 2011 as a result of multiple stab wounds in the chest and abdomen caused by the stabbing.

[2] The accused pleaded not guilty to all three counts preferred against him and did not furnish any plea explanation. However, in terms of his pre-trial memorandum he formally admitted the following in terms of section 220 of the Criminal Procedure Act 51 of 1977 as amended:

- That the accused and Anetta Jantjies were in an actual or perceived intimate romantic relationship at the time of her death.
- That during the evening of 3/4 August 2011 he stabbed Anetta Jantjies with a knife who died as a result of the injuries she sustained from the said stabbing.
- That during the same evening of the 3/4 August 2011 the accused stabbed Salmon Rooinasie once in the back.
- The section 119 proceedings in the Mariental Magistrate's Court are admitted as well as the fact that the accused also goes by the nickname 'Elly Moses'.

[3] Alfriede Kooper testified that he is currently twenty three years old. In March 2009 he resided with her mother, Maria Kooper at Farm Onzerust belonging to Poppie Krauss. He knows the accused who called himself Paulus, he was looking after Poppie's mother's goats. He also knows the deceased, Paul Fredericks who looked after Poppie's sheep and goats. Alfriede was working in Poppie's garden. On 5 March 2009 Alfriede; her mother; the deceased Boetiemann also known as Paul Fredericks and Poppie drove to Mariental for shopping. They came back at 22h00 and the witness offloaded her mother's groceries. The accused came to her mother's house. Inside the lighted house the deceased and Maria Kooper were sitting on the bed. They both told the accused

that they don't drink with him, he must go out. This witness was sitting at the fireplace in front of the house whose front door was open. With the help of the illumination inside he could see what was happening in the house. The accused came out followed by the deceased who closed the door behind him. As the deceased was busy closing the door the accused did not go far, he just turned, drew out a knife and re-entered the house. He opened the door, grabbed the deceased on his collar and held him against the wall.

[3.1] As a result of the scuffle between the accused and the deceased the front door came to close. Maria Kooper started screaming. For fear that if he enters the house through the same front door the accused may stab him. The witness ran around and entered through the back door. Elfriede Kooper is a single witness in respect of the stabbing of the deceased Paul Fredericks. He saw him being stabbed on the forehead and on the left side of his ribs before he ran away to tell the owner of the farm Poppie what happened. D/W/O/ Maritshane helped Dr. Kandenge during the post mortem examination. One of his cardinal duties is to check the body for any external injuries before he opens it to remove the innerparts, which he did that day. He corroborated Alfriede on the said injuries. Defence counsel;s contention that Dr. Kandenge did not corroborate Alfriede on the injuries of the deceased Paul Fredericks is not correct in view of what D/W/O. Maritshane testified. The doctor's report was lost by the police and he did not make a copy of it. That is why he could not recall the number of stab wounds. He only had to rely on the summary he made on the chief post mortem findings and Pol 29 covering only the deep penetrating stab wound injury on the right side of the chest as the cause of death. Secondly both doctors Manyere and Dandadze testified that chest refers to both the front and back parts of the rib cage. Accordingly a stab wound on either side is a chest injury.

[3.2] According to Alfriede his mother the late Maria Kooper was helplessly standing there asking the accused why he was doing that, but he did not answer. He ran and informed Poppie about the incident, and came with her. They met the

deceased on the way running to Poppie's house where they were coming from. The deceased fell in the kitchen of Poppie's house. Maria Kooper and Poppie used towels to tie and cover his stab wounds. Hanse brought the vehicle whereon the deceased was loaded at the back. Poppie; Maria Kooper, the deceased's wife and children as well as this witness boarded the vehicle and escorted the deceased to the hospital in Mariental. The deceased's wife also took along his hospital passport. He appeared to be in pain as they drove away. On the way the deceased's wife notified them that he was no more.

[3.3] They proceeded to the hospital in Mariental up to the mortuary section where the body of the deceased was photo taken before it was placed inside. They slept over in Mariental. The following morning they went to Hoachanas Police Station to give statements. According to this witness the accused used the same knife he used to slaughter the goats. The deceased had a green shirt underneath the blue overall and a brown hat.

[3.4] On the trip to the shops Poppie testified that when they came back from shopping in Mariental, the deceased Paul Fredericks, was dropped off at Maria Kooper's house which later became the scene of crime. This is contrary to the accused's evidence saying the deceased was dropped at his house where he hit him with an iron bar, but he cannot say exactly whether it is on the left or right arm. Poppie corroborates Alfriede's evidence to the fact that the incident took place at Maria Kooper's house. In my view their version satisfactorily displaces the accused's evidence of self defence against the deceased Paul Fredericks.

[3.5] During cross-examination Alfriede insisted that the accused said he was 'Paulus' when he took up his employment at Farm Onzerust and he became well known by that name. He did not deviate from his evidence in chief.

[4] Sylvonia Isabella Crownshaw testified she is the owner of farm Onzerust in Mariental district, and that Poppie is her nickname. She knows the accused as

'Tate Paulus' and the deceased Paul Frederick, whom they used to call 'Boetieman'. Her farm was divided in two parts, her mother took the homestead section and she took the camps. The accused was working for her mother, but when she fell ill, she took over the responsibility of all the farm including the workers such as the accused before court. Both the deceased and the accused were caretakers looking after sheep and goats. Maria Kooper was a domestic worker who resided at the farm, and her son Alfriede Kooper helped out on other tasks and was paid therefore.

[4.1] On 5 March 2009 in the evening she was sitting in her living room when the deceased walked in covered in blood. She stood up and asked him to come to the kitchen where there was more light. She saw that he had three stab wounds, one on the forehead; a hole went through the hat he was wearing; another wound behind the shoulder blade and at the back. These were all open, cut wounds and were bleeding. Maria Kooper bought lappies/towels and they covered the wounds. In the meantime Alfriede was already inside the house. She sent for the deceased's wife and children. The deceased was so injured that when he breathed out, a whizzing sound was coming out through the open stab wounds as well. She called Hanse, the driver, they loaded the deceased. Maria Kooper, her son Alfriede, the witness, the deceased, his wife and children boarded the vehicle escorting the deceased to the hospital in Mariental.

[4.2] Poppie corroborates the evidence Alfriede Kooper. The deceased died on the way, but they proceeded to take the body to the hospital in Mariental where the doctor declared him dead. She got scared to go back to the farm, she slept over in Mariental. The police arrested the accused in her presence, and she saw the murder weapon. It is a big black handled knife used for slaughtering and skinning big animals such as cattle and donkies.

[5] Salmon Rooinasie testified that he is a resident of Schlip, and the deceased Anetta Jantjies stayed in the same location. He knows the accused as

'Moses' and as the boyfriend of the deceased. On 3 August 2011 at 21h30 he was from a shebeen underway to his residence. He noticed a still open liquor outlet belonging to Isaacks and he went there to buy something to drink. Isaack's house was well ventilated he consumed his beer and while on his way home, the deceased, Anetta Jantjies recognized and called him. She wanted to go to another shebeen, but he told her they were already closed. Anetta was together with her thirteen year old daughter Nabes, as well as her boyfriend, the accused before court. They went to Isaack Jantjies's shebeen which was still open and they were drinking there. Nabes was not drinking. From here they bought another liquor which they took along to go and continue drinking at home. They came to the deceased's house, she first went to another house to ask for tobacco.

[5.1] It was cold, that is why the fire was inside the house. Rooinasie took it outside. As he was putting the firewood together in order to blow it, the accused stabbed him in the back without saying a word. That was not the first time for Rooinasie to drink together with Anetta. When he was about to stab him for the second time, he dodged and ran away. At home his mother and others took him to the clinic for treatment. While still receiving treatments, the deceased, Anetta Jantjies was also brought in. She was taken to the hospital, but died on the way. Rooinasie spent a week at the Clinic and was later transferred to Katutura State Hospital in Windhoek where he spent one week. From there he was taken to Windhoek Central Hospital where he spent a month and two weeks. During his stay in hospital, a pipe was inserted in a hole in his left armpit along his left side to drain the dirt caused by internal bleeding. He was also operated on the abdomen to clean the inside.

[5.2] During cross-examination Rooinasie testified that it was the deceased who told him to take the fire which was near the door inside the house to the outside which he did. He insisted saying he was standing at the fire and was about to squat to blow it, when the accused stabbed him in the back. He denied having a relationship with the deceased Anetta Jantjies, and neither was he on top of her,



having sexual intercourse at the time of the incident, as the accused alleges.

[5.3] Rooinasie further denied that he hit the accused on the head with a brick, and neither was there a fighting or scuffle that necessitated the deceased to come in between and separate them

[6] Rosalia Jantjies testified she is known as Nabes. She is now 16 years old and has gone up to Grade 7 in school in 2015. She is currently not attending. She knows the accused as 'Moses', the name he gave to himself at Schlip. He was in a romantic relationship with her deceased mother Anetta Jantjies for a very long time. The accused did not stay with them, he resided at another house with a male person. The residence where the incident took place is a one roomed house. The night before the incident the sleeping order was as usual. The accused and Anetta Jantjies (the deceased) slept on the bed, she slept on the floor of that same room. On 3 August 2011 during the day she was just at home with her mother. In the evening Rooinasie was at their house. The four of them went to the nearby shebeen where the three elders drank red wine together, while the witness just sat next to her mother. While drinking, her mother was also dancing with Rooinasie, Rosalia and the accused were just watching.

[6.1] From the shebeen they all came back home. Rosalia came to stand closer next to the house. While there, she saw the accused standing behind the house. Rooinasie carried the fire which was inside the house on a piece of zinc to the outside. He was then in a bending position to blow and put it together when the accused came from behind the house where he was standing and without a word stabbed him in the back with a knife. She could see the shining blade in the lumination of the street light. Rooinasie, herself, and her mother Anetta Jantjies, ran away from the scene of crime in the direction of Johanna Afrikaner's house. The latter said they must go back to their home. The deceased Anetta Jantjies, was walking in front and she was following her.

[6.2] When they arrived at home the accused came, holding a knife in his right hand, he grabbed Anetta by the throat with his left hand and started throttling her. He first stabbed her on the left upper breast, secondly he stabbed her just below the first blow, and thirdly he stabbed her on the left side of the abdomen. The accused did not pull out the knife from her abdomen, he cut her by moving it across her stomach from the left to the right, slitting her stomach open so that her intestines came out. The accused then carried the deceased and put her inside the house. Rosalia ran and reported the incident to Johanna Afrikaner and she spent the night at Sophia's house. After the body was removed the police came and asked her to show them various points at the scene which she did. In court she identified the accused as the person she saw stabbing her mother Anetta Jantjies and Salmon Rooinasie.

[7] Johanna Afrikaner testified that she was born and bred in Schlip, and is still residing there. She saw the accused for the first time on 24 December 2010 at a place outside Schlip. She found him at a farm where they usually walk past to get to their farm. She usually asked for some water from him and he told her his name is 'Moses'. He said he replaced the other man who used to work there. They spoke in Afrikaans. Anetta Jantjies the deceased, is her younger sister from the same parents. On 3 August 2011 she saw her at Isaack Jantjies's house at around 15h00 busy drinking there. She was with the accused, and Rooinasie at that house. The accused was the deceased's boyfriend, and Rooinasie was just her friend.

[7.1] Johanna again saw the deceased with her daughter, Nabes later at 22h00 in the night. She asked her to go home and sleep, because the child has to go to school. After telling her like that she went to bed. The deceased's residence is ± one hundred meters from where she is staying. While asleep, she heard a female person screaming. The deceased's daughter came at her door reporting that her mother has been stabbed by 'Moses'. Her home name is Nabes, her actual name is Rosalia Jantjies. She got up and went to fetch her other sister, Sofia

Swartbooi. The two walked to the deceased's house. The inside of the deceased's house was at that time in darkness. She put on her cellphone light and first noticed a big blood spot on the carpet. The accused's evidence that Rosalia was not present at the scene of crime when her mother got injured is not correct because her version in that regard is in accord with medical evidence. Johanna also corroborates her. It was Rosalia who also pointed out the scene and various places to the Investigating Officer Neib which clearly shows that she was present. Her evidence therefore satisfactorily displaces the accused's version in that regard.

[7.2] Johanna Afrikaner is materially corroborated by her sister, Sofia Swartbooi, regarding what the two found and did regarding the assault on the deceased Anetta Jantjies in this case. The deceased was laying on her back on the bed screaming in severe pain. There was clothing all over her body and it appeared she wanted to do washing before she got injured. All that she could see at that time was the exit wound on her right upper arm. She left Sofia and went to call Alex Dreyer who had a vehicle to come and help. They failed to lift the deceased and put her on the vehicle because her intestines were out of her stomach. She went to the Clinic to ask the nurse if it was possible that she can at least be treated at her house. None of the two sisters testified about dressing the deceased at the scene of crime, and it is highly unlikely that they could have done so, in view of the condition in which they found her. D/W/O Maritshane testified that she had a pantie on at the time he attended to her at the mortuary. The above evidence coupled with the fact that the accused himself was at great pains to tell the court how Rooinasie was dressed from waist downwards despite testifying that he found him on top of the deceased having sex. The sister was still busy with Salmon Rooinasie. She gave her some wet material; plastic gloves; and other stuff to put on the wound of the deceased. The witness, Sofia, and Alex put the materials on the deceased's wounds and loaded her on the vehicle. On arrival at the Clinic she was still in the same condition in which they found her at her house. A drip was put on for her, but she started vomiting and

was later no more.

[7.3] According to Johanna the deceased survived on odd jobs such as washing and ironing. She had only two children, an eighteen year old boy who was working outside Schlip at the time of the incident and Rosalia Jantjies who was staying with her in the one room house belonging to their mother who is staying in Rehoboth. Rosalia was very close to her deceased mother and is finding it very difficult to forget her. She is currently working as a baby sitter here in Windhoek.

[8] Patrick Neib testified he is a DW/Officer and the investigator of the matter. On 4 August 2011 he received the report of an assault at Schlip, and he drove there with two other officers. At the Clinic he found that Anetta Jantjies has already passed away, while Salmon Rooinasie had already been transferred to Rehoboth for further treatment. He was given the name of the suspect as 'Moses'. This officer was in the company of Cst. Lameck who assisted to interpret from English into Oshiwambo, the language the accused understood. They found him at his house. He said he was waiting for them, because he stabbed his girlfriend and another man. Sgt. Kazongominja explained to him that they were police officers, that he has a right to remain silent; the right to have a lawyer of his own choice to defend him on the matter; if he cannot afford a lawyer privately he can apply for a Legal Aid funded counsel; and he has a right to apply for bail. Hereafter he was asked whether his name is 'Moses' and he said 'Yes'.

[8.1] The accused pointed out the knife as the weapon he used in the two assaults, but he did not say to whom it belonged. Sgt. Mokhatu took and handed it to Neib as well as a blue overall trouser, a jacket and shoes. He was also ordered to undress himself and all the clothes were handed over to D/W/O. Swartz of the Scene of Crime officer. They suspected the items to have blood stains. Swartz confirms to have been shown the various points at the scene by Rosalia, he compiled a photo and sketch plan.

[8.2] From the accused's house the officers went to the scene of crime where they found Johanna Afrikaner. After interviewing her, she called Elsie Garises, David Rooinasie and she introduced the deceased's daughter Rosalia Jantjies to them. Inside the house of the deceased Anetta Jantjies, they saw that the floor, all the clothes and bedding were full of blood. He looked for any dangerous object such as stones or bricks but there was nothing. The bed was standing on the floor. Rosalia pointed out certain points which they asked her. She also pointed out the same scene of crime to D/W/O. Swartz, the Scene of Crime Officer. Neib took statements from them.

[8.3] Neib the arresting and investigation officer should have seen a fresh wound on the forehead of the deceased, because he arrested him the following day, but instead he was shown an old healed wound. Dr. Dandadzi corroborated the police officer on the J88 he completed after examining the accused. He described it as "old superficial bruise on the scalp". This conclusively shows the accused to have been very untruthful when he testified that Salmon Rooinasie hit him with a brick on the forehead.

[9] Alfredo Amukwaya testified he is a police officer attached to the Scene of Crime Unit, Mariental. On 6 March 2011 he received a call that a patient, Paul Fredericks died while being transported from the farm Sekiritaris in the district of Hoachanas en route to Mariental. He went to the hospital where Priscilla Beukes identified his body to him. He took photos and he put the body in the mortuary. On 7 March 2011 he went to the farm Sekiritaris. There he met Maria Kooper who showed him various points which he covered with his camera. In particular she showed him the place where she and Paul Fredericks were sitting and drinking alcohol. The accused approached the deceased asking to drink as well, but was refused and an argument ensued. The deceased pushed the accused out of the room. The accused went, collected a knife and came back to the scene of crime. He came to stand closer and started stabbing the sitting deceased several times in the chest area, and walked back to his house.

[10] According to Amukwaya, the accused was present when Maria Kooper showed him all the points including where the vehicle came to stand when they boarded the deceased and transported him to the hospital in Mariental. As Maria Kooper was leading him throughout the scene of crime she recognized the black handled knife that was on the table and pointed it out to him as the one that was used to stab the deceased. He also collected the knife punctured clothes the deceased had on; a blood stained green shirt and overall at the owner of the farm's house.

[11] Jacoba Magdalena De Waal testified that in August 2011 she was stationed at Schlip Clinic as an enrolled nurse, a position she held for twenty one years. She knew Anetta Jantjies as one of the patients who visited the clinic regularly. On 3 August 2011 Elsie Garises reported the assault of Anetta Jantjies to her, saying her intestines were hanging outside. De Waal gave her linen and sever, sterile water to keep the intestines wet and to cover it with a linen sever. That was how she was brought at the Clinic for her attention, while this nurse was still busy with Salmon Rooinasie, who had a very deep wound behind the back underneath the left scapula. He had a green hospital passport. She referred him to Rehoboth Catholic Hospital for the doctor's attention. She did not indorse the referral in the passport, because only referrals to Windhoek for surgery are endorsed in the passport. When she turned to attend to Anetta Jantjies, she saw that all her intestines were outside; she was unconscious and was bleeding a lot.

[11.1] De Waal cleaned the intestines, put them back inside the stomach and covered the wound with a plastic to keep it wet and warm. She put both her arms on drips, but she passed away. She had two wounds on the right upper arm out and inside on the left breast. De Waal said the patient had lost a lot of blood, and she died.

[12] Godfried Maritshane testified he is a DW/Officer stationed at Hoachanas Police Station. He is a Curator for nine years. His duties entail helping out the

doctor during post mortem examination; checking the body for any external injuries; opening it; removing the inner parts to enable the doctor to properly conduct the examination and the completion of his observations on the prescribed forms (report). At Hoachanas Police Station he was directly attached to the Mariental State Hospital Mortuary. On 11 March 2009 he was on duty and helped in the post mortem of a Namibian male identified to him as Paul Fredericks by Sgt. Amukwaya. The deceased's upper body was naked, and had a long trouser on.

[12.1] Maritshane was assisting Dr. Kandenge. He observed the following stab wounds on the body of the deceased: on the forehead; on the left side under the ribs; at the back on the right side under the shoulder. After the doctor had compiled the report he gave it to him and he handed it over to D/W/O. Singo. On 10 August 2011 he had also assisted Dr. Kandenge in the post mortem of a Namibian female identified to him as Anetta Jantjies by D/W/O. Neib. He observed the following stab wounds on the deceased's body whose upper part was bandaged: the stomach was cut across and the intestines were out; left side breast; an exit wound on the right upper arm; two wounds one a little bit up and the other almost in the middle of the back. She had a pantie on.

[13] Gwinyai Kadenge testified that he is a doctor, and was stationed at Mariental State Hospital on 11 March 2009. He examined the body of Paul Fredericks. The report was lost by the police and he did not make a copy of it. He could therefore not recall the number of stab wounds. During his evidence he had to rely on the summary he made on the chief post mortem findings and Pol 29. This covered the deep penetrating stab wound injury on the right side of the chest. The deceased sustained a deep penetrating stab wound on the right side of his chest, injuring the upper lobe of his right lung causing it to collapse. This wound resulted in the deceased sustaining a significant amount in internal bleeding inside the chest which caused his death. According to the doctor a significant amount of force was used with a sharp object in order to achieve such

a degree of penetration.

[13.1] On 10 August 2011 he examined the body of Anetta Jantjies who sustained multiple stab wound injuries which damaged the following internal organs: the cutting open of the stomach in the lower part region; the cutting of the small intestines and the bowels were protruding outside the stomach; these injuries resulted in the leakage of stomach and intestinal fluids resulting in a serious inflammation of the inside wall of the stomach; internal bleeding inside the chest; the posterior aspect of the right lung was punctured; the right humerus bone of the upper right arm was fractured: This wound was inflicted on the left side and it went diagonally through to the right of the chest cavity. It penetrated through several muscle layers. A quite significant amount of force must have been used to achieve this magnitude of penetration. The doctor said there is a likelihood of a sharp object being used. He said all the six wounds are potentially lethal.

[14] Eliakim Nampindi is the accused in this matter. Before his arrest he used to look after stock belonging to Poppie's mother at Farm Onzerust in Mariental. He fell in love with Anetta Jantjies. The deceased Paul Fredericks also known as Boetiemann worked for Poppie on the same farm. On 5 March 2009 in the evening Fredericks came at the door of his room and said: 'you Wambo come out I will kill you today'. According to the accused he had no choice but to get out, run away, and hide so that he can go to his employer the next day. At the door inside his room there was a table where there was a knife. When he got out of the room, Fredericks hit him with an iron bar on his left arm. He turned, took a knife and stabbed him twice, but as it happened fast, he does not know where he struck him. Fredericks ran away to Poppie's house. He was arrested the following day. He was granted bail in 2009 and he went to stay at Phillipus's house in Mariental. His employer refused to reinstate him, because the person he had stabbed with a knife, Paul Fredericks had died.



[14.1] In January 2011 it was through his deceased girlfriend Anetta Jantjies, that he got employment by Mr. Christian at Schlip as a builder. They stayed separately, and they used to visit each other. His girlfriend had a daughter Rosalia Jantjies, who spent a night at Sophie's house whenever he went to sleep over at his girlfriend's house. Salmon Rooinasie caused a lot of problems in their relationship with the deceased. On 2 August 2011 he went to work from 06h00 to 18h00 in the evening when he came he got a bath, put on new clothes and at 20h00 he went to his girlfriend's house. At the door he called out her name. Instead of answering, he heard her saying " ... Rooinasie leave me my boyfriend is here". He pushed the door open because it was not locked. He saw Salmon Rooinasie on top of his girlfriend having sexual intercourse. Rooinasie jumped up, Anetta was still on the bed, took a brick and hit him on the forehead where the hairline starts.

[14.2] In my considered view it is highly unlikely that Rooinasie who was faced with such a dangerous emergency of being caught in the act could have jumped up and still manage to lift one of the bedsides in order to remove a brick whereon the bed was standing and Anetta was still sleeping and hit the accused. I say this, because one of the bricks whereon the occupied bed is standing cannot just be picked up like the one which is just laying on the ground. According to the accused he got swollen and was bleeding. He showed the injury to the police. A fight ensued inside the house between him and Rooinasie. The deceased Anetta got in between to separate them. She was facing the accused and shielding Rooinasie. In order to stab Rooinasie he raised the hand in which he held the knife up across Anetta and struck Rooinasie in the back.

[14.3] Despite the blow, Rooinasie was still coming towards him to fight and Anetta was also still in their midst. He again followed the same route, but unfortunately struck the deceased Anetta, on the chest, but he cannot remember how many times. The reason being that he missed Rooinasie several times. Rooinasie ran away and the injured deceased sat on the bed. The accused also

left the scene, he went back to his room where he was arrested. He received treatment at hospital. His intention was to stab Rooinasie, but he dodged and the blows landed on the deceased. From the accused's evidence, Rooinasie should never have been struck in the back at all. The accused denied Rooinasie, and Rosalia Jantjies's evidence that the four came from a shebeen and Rooinasie removed the fire from inside the house to the outside and was blowing it up when he was struck in the back. According to the accused Rosalia was not at the scene of crime. As already alluded to, this evidence is false beyond reasonable doubt.

[14.4] During cross-examination the accused confirmed that at the time he took up employment Poppie gave him the name 'Paulus'. From that time he became well known by it up to the time of the incident. This evidence is at variance with the instructions he gave to his counsel that he never told any other person that his name was 'Paulus'. The accused's counsel argued that the name 'Paulus' had nothing to do with the accused, and that it referred to another person unrelated to him altogether. According to the accused when Poppie's car came back from town, Paul Fredericks was dropped at his house. This has been credibly displaced by both Poppie and Alfriede Kooper. He was sitting at the fire outside his house, and no other house had fire, because they have just arrived from town. The accused kept on referring to a fighting between him and Paul Fredericks which is not truthful, because in the same vein he says after he was hit, he stabbed him, dropped the iron bar and he ran away to Poppie's house.

[14.5] Later the accused said after he stabbed the deceased, they were about to confront each other, but they did not, because the deceased ran away. The police found the iron bar on the ground. He changed the story to say after he stabbed the deceased, they held one another for a moment before he ran away. The accused again changed his story and said after he was hit, he got frightened and therefore cannot tell how many times he stabbed the deceased. He went further to say he also does not know which of the versions he has told the court is

correct, because when the deceased hit him, he stabbed him and he ran away. The accused's evidence that he only stabbed the deceased Paul Fredericks once before he ran away, is not the truth, because he was in fact stabbed three times, as D/W/O. Maritshane of the mortuary and Alfriede Kooper testified.

[15] When the accused came to work for Mr. Christian at Schlip, he gave his name as 'Moses'. When asked what Rooinasie was doing on top of Anetta, he said they were having sexual intercourse and he could see him doing up and down movements.

[16] It is highly unlikely that the accused could still have found Rooinasie on top of the deceased after he had long arrived at the door calling her by name, announcing his presence, listening to her telling Rooinasie to stop and leave her alone, up to the time when the accused eventually opened the door. The accused was also at great pains to describe how Rooinasie was dressed from the waist downwards despite the fact that he said he found him on top of the deceased.

[17] More improbable is the accused's evidence that when he got into the room and found Rooinasie in the act he could not stop, because he was about to ejaculate. The accused said he was just standing there doing nothing till Rooinasie got finished, got off from the deceased, picked up a brick and hit him on the forehead. Later the accused testified that Rooinasie threw a brick at his forehead while in his evidence in chief he testified that he was hit with a brick. The infestation of the accused's evidence with numerous contradictions and improbabilities clearly shows that his account of events is not truthful at all.

[18] Ms. Ndlovu, counsel for the prosecution submitted that the evidence before court regarding the severity of how the accused stabbed the two deceased victims without a justifiable reason clearly shows that he directly intended to kill them which has in fact happened. This counsel urged the court to convict the accused as charged for their death.

[18.1] Regarding the victim on the third count Ms. Ndlovu submitted that the depth of the stab wound and the complications resulting in the operation to remove/drain the dirt caused by internal bleeding shows that the accused wanted to kill Rooinasie, and should therefore be convicted for attempted murder.

[19] On the other hand Mr. Siyomunji, counsel for the accused submitted that the prosecution has failed to prove intent, because the accused was defending himself. Accordingly he can only be convicted of culpable homicide on the first and second count and on assault on the third count respectively.

[20] When regard is had to the accused's evidence in chief and cross-examination he testified that all the injuries his deceased girlfriend Anetta Jantjies sustained were because she came to stand between him and Salmon Rooinasie. He was required to stretch the hand in which he held the knife up and way across his girlfriend to strike at Salmon Rooinasie. This evidence is false beyond reasonable doubt because from the medical evidence the location of the numerous fatal stab wounds on the two deceased victims appears to have been inflicted directly in a face to face attack.

[20.1] This is also in accord with their depth and the extent of devastation that ensued. Medical evidence corroborates the eye witness Rosalia Jantjies who testified that the accused held each victim firm with the left hand and then proceeded to stab them the way he wanted without any hindrance whatsoever.

[20.2] The J88 of the victim, Rooinasie on the third count of attempted murder shows the locality of the stab wound right in the back a little bit below the left shoulder blade. This was testified by the victim himself and corroborated by eye witness Rosalia Jantjies. Alfriede Kooper is a single eye witness in respect of the stab wounds the accused inflicted on the deceased Paul Fredericks. Rosalia Jantjies is a single eye witness in respect of the stab wounds the accused

inflicted on her deceased mother, Anetta Jantjies. Rosalia Jantjies is also an eye witness corroborating another victim Salmon Rooinasie how the accused stabbed him in the back while busy attending to the fire. I have approached their evidence with caution, and have found that their evidence is in accordance with medical findings. Therefore they are reliable, satisfactory and credible witnesses. They remained consistent to what they saw during the incidents, and were unshaken in both their evidence in chief and cross-examination. In my view they meet the requirements set out in section 208 of the Criminal Procedure Act 51 of 1977 as amended. Also see the judgment of this court regarding single witnesses in *S v Noble*<sup>1</sup>. I am satisfied that the prosecution has proved that the accused has acted with the required *mens rea* to bring about the death of Paul Fredericks and Anetta Jantjies respectively beyond reasonable doubt.

[20.3] The prosecution has also proved beyond reasonable doubt that the accused unlawfully and intentionally assaulted Salmon Rooinasie by stabbing him with the knife in the back with the intention to murder him.

[21] The accused's account of events leading to the injury of the two deceased Paul Fredericks and Anetta Jantjies and the third victim Salmon Rooinasie who survived is rejected as false beyond reasonable doubt.

[22] In the result the accused is convicted as follows:

Count 1: Guilty: Murder – *dolus directus*;

Count 2: Guilty: Murder – *dolus directus* read with the provisions of the  
Combating of Domestic Violence Act, 4 of 2003;

Count 3: Guilty – Attempted murder

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<sup>1</sup>S v Noble 2002 NR 67 (HC) head note.

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A M SIBOLEKA

Judge

APPEARANCES:

STATE : Ms E. N. Ndlovu  
Office of the Prosecutor-General, Windhoek

ACCUSED : Mr M. Siyomunji  
Directorate of Legal Aid