

**REPUBLIC OF NAMIBIA**



**NOT REPORTABLE**

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

**CASE NO: CC 38/2009**

In the matter between:

**THE STATE**

**Versus**

**JULIUS DAUSAB**

**ACCUSED**

**Neutral citation:** *S v Dausab* (CC 38/2009) [2017] NAHCMD 105 (03 April 2017)

**CORAM:** SIBOLEKA J

**Heard on:** 27 February 2017; 6, 15, 27, 28, 29 March 2017

**Delivered: on:** 03 April 2017

**Flynote:** Criminal law: Sentence – accused shot his girlfriend and her mother to death at their residence in Okatuo, Okahandja - double murder of defenseless women – sentence severe.

**Summary:** Two defenseless women, the accused's girlfriend and her mother were gunned down with a .308/7.62 mm hunting rifle.

Held: The murders were not committed on the spur of the moment, but thoroughly premeditated and carefully executed.

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## VERDICT

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In the result the accused is sentenced as follows:

- (a) Count One: Murder dolus directus, read with Act 4 of 2003: 38 years' imprisonment;
- (b) Count Two: Murder dolus indirectus 25 years' imprisonment;
- (c) Count Three: Possession of a firearm without a license on diverse occasions in contravention of section 1 read with sections 1, 8, 10, 38 and 39 of the Arms and Ammunition Act 7 of 1996, read with section 94 of the Criminal Procedure Act 51 of 1977 as amended: Two years' imprisonment;
- (d) Count Four: Possession of ammunition on diverse occasions in contravention of sections 1, 8 10, 38 and 39 of the Arms and Ammunition Act 7 of 1996, read with section 94 of the 'Criminal Procedure Act 51 of 1977 as amended': Two years' imprisonment.
- (e) It is ordered that the sentences imposed on the accused in counts three and four should run concurrently with the sentence imposed on him in count one.

(f) In terms of section 10(6) of the Arms and Ammunition Act 7 of 1996, the accused is declared unfit to possess a firearm for a period of two years starting from the time the accused finishes serving his term of imprisonment on this matter.

(g) In terms of section 34(1)(b) of the Criminal Procedure Act 51 of 1977 it is ordered that the .308/7.62 mm hunting rifle, serial nr. 65 1920 be handed back to the rightful owner, Mr. Gerson Kheimseb.

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### SENTENCE

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SIBOLEKA J:

[1] On 31 January 2017 I have convicted you on two counts of murder, illegal possession of a rifle and ammunition on diverse occasions without a license. It is now my duty to consider an appropriate sentence for you. In doing that, I have to take your personal circumstances, the crime itself, and the interests of society into account. Closely connected to the above are the objectives of punishment such as deterrence, prevention, retribution and prevention. It should always be guarded not to over emphasize one factor at the expense of others. However, this result cannot be entirely avoided as the sentencing process depends on the merits of each case.

[2] I will now look at the personal circumstances of the accused.

[3] Julius Dausab, a first offender, mitigated under oath. He testified that he is now 48 years old. He was 39 years at the time of the commission of the offence which even after conviction he is still vehemently denying. He was born at Okahandja and went up to Grade 10 at Augustinium Secondary School. From

here he went to assist his grandfather with farming. After the old man's death he came back to town. He got a drivers license and in 1991 he got employed as a truck driver for Myburgh Transport, Okahandja. His job ended when his employer was convicted for fraud.

[4] He got a cross border trucking drivers job at Wesbank Transport for eight years. He later resigned to take up another truck driving job at Collecting and Delivery Transport Services. However, he later also left this work as his children had to start school. He got a home based truck driving job at Namaqua Meat Market in his home town, Otjiwarongo. He remained at this work till the time of his arrest. He has nine children in total and only one of them is from his deceased girlfriend. His in-laws were both unemployed and he financially assisted them. He financially supported all his children including two kids of his in-laws. He provided for their school needs.

[5] He was in a romantic relationship with the first deceased for seven years. During this whole period he was only at home during weekends due to work. All was going on well in their relationship. No tension or arguments were experienced till she passed on. The accused testified that he feels a lot of pain for losing his girlfriend and her mother. It was a great loss to him and to the first deceased's child. He stayed in custody for three years and 20 days before he was released on bail in 2012.

[6] The accused stated that he is a diabetic class two. He is on both injection and tablets prescribed by his private doctor. He has a diet calendar (guidelines) showing the food he should be given at all relevant times. Although the accused said he has already collapsed twice, the doctor denied knowledge of it. According to the doctor there is no way that such a serious occurrence would have taken place without his knowledge.

[7] The brief background of these crimes is as follows: The accused borrowed a .308/7.62 mm hunting rifle to go and shoot what later from the evidence turned out to be a ghost donkey. He brought the rifle back to the owner saying he will re-borrow it again once the donkey has been found and placed in the kraal. According to the accused he will be informed when that happens, meaning the animal will then be ready to be shot and slaughtered. That is when he will come back to re-borrow the rifle. On the day of the incident the accused came and borrowed the rifle and took it along to Okatuo to visit his girlfriend, the deceased in the first count at Simon Kavendja's house. Like it usually happened on his previous visit, him and his girlfriend slept at the backside of his green Ford Cortina pickup truck. During the night he shot his girlfriend in the abdomen and she died on the spot. He thereafter shot through the door of the shack house wherein Simon Kavendja, his girlfriend, (the deceased in the second count and the mother of the deceased in the first count were sleeping with children) striking her to death.

[8] Thereafter the accused forced Simon Kavendja to help him push his vehicle to start, which was done and he drove away. The accused was arrested along the street down town in Otjiwarongo where he was residing. The crime was properly pre-meditated, heinous and very brutal as both victims are defenseless women.

[9] The killings were gruesome and inhuman. This is aggravated by the fact that a .308/7.62 mm high velocity hunting rifle was used as a murder weapon. The offences were committed during one transaction. The only difference between the two murders is that on the first count the accused directly intended death to occur, while on the second count he indirectly brought it about.

[10] On the interests of society the matter is very serious as it once again shows how two innocent lives were abruptly ended. Violence against women is serious and this court has now and again handed down stiffer sentences to

convicted, but this does not appear to yield any fruit. This court however remains committed to continue punishing offenders of murder in a domestic setting severely. Women are human beings, weaker as they are physically – they nonetheless have the same right to exist just as good as their strongly build male partners.

[11] In aggravation of sentence the Prosecution counsel called Magreth Kukuri, the elder sister of the first deceased. She testified that the second deceased is their biological mother. After the death of her mother and sister, she removed all five children from the residence at Okatuo where the incident took place and is residing with them. She did this to avoid trauma if they had to continue staying at the place of their late mothers.

[12] According to Kukuri, Kavendja was also traumatized by the incident such that he is no longer able to continue staying with the children. She would appreciate any financial assistance the accused may give to his children. In terms of Ovaherero culture, she was taken away from her biological mother at a very early age to be brought up by her aunt. She said some time back her deceased sister found her at her workplace in Oshakati. She noticed that she had a red eye, which she said was as a result of an assault on her by the accused. The accused however vehemently denied this. She asked the court to impose a stiff sentence on the accused for the double murder.

[13] The court called two witnesses, namely the Head of the Food Provision Section and the medical doctor at Windhoek Correctional Facility Hospital to shed light on how inmates with chronic diseases such as diabetic are taken care of.

[14] Mateus Achilles testified that he is the head of the Food Provision Department at Windhoek Correctional Facility. He is in that position for ± 16 years. The facility holds seven diabetic patients who are fed in accordance with

the dietitian's guidelines. They eat the same food as all the inmates. The only difference is that they are given more food than the other inmates, because of their diabetic condition. They don't provide the type of food to these inmates which is not in accord with dietary guidelines as that is not allowed. Inmates who are financially able to buy their own food are allowed to do so through his department. He has so far not encountered problems related to the none availability of food recommended to diabetic inmates.

[15] Dr. Irvin Zimudzi testified that he is the Medical doctor of the Windhoek Correctional Facility Hospital. He is in charge of the medical care of all inmates, and has held this position since the beginning of 2015. The facility is also home to some inmates who suffer from multiple chronic ailments such as HIV Aids, hypertension, diabetic and others. The facility nonetheless has the capacity and the competency to take care of them all up to and until they are released.

[16] According to the doctor if one of the inmates collapse, *he has to be informed* in order to attend to the matter. The same directive applies even when he is out of town as this practice enables him to issue instructions to the attending nurse(s) telephonically on how to go about helping the patient. He has not seen the accused before. His hospital passport does not show that he fainted sometime while inside the Facility. In regard to diabetics, the doctor corroborated the evidence of the head of the Food Provision Department saying they are fed on the strength of dietary recommendations. Even where a variety of food groups are indicated, the Food Section knows what to do and to serve the inmates suffering from various ailments. Inmates who prefer and are able to buy food and still afford private medical assistance are free to do so. (My own emphasis)

[17] All inmates on medication prescriptions are at liberty to choose whether they want to keep their injectable and oral supplies with them in the Cells where they are housed, or they require regular visits at the Facility Hospital to take their dosages there. Those who opt to keep their injectable medicine are provided with

iced cool boxes to maintain the required temperatures of their medicines. He stated that collapsing in diabetic patients is occasioned by low sugar level caused by not eating food or overdosing of medication. High sugar levels are caused by not taking medication; infections of any kind for example urinary tract infections. The doctor testified that he has not yet experienced the above problems. In general he said diabetic sickness is appropriately controlled by diet and medication, just like any other chronic condition.

[18] From the health passport of the accused the doctor is satisfied that his diabetic condition is common, meaning it is just like that of the seven diabetic patients who are already in his care. The facility is competent and has the capacity to look after the accused as its eighth diabetic patient, in the same way it is doing to its inmates of record.

[19] Counsel for the prosecution cited various authorities related to sentencing offenders for violence against defenseless women. He thereby persuaded the court to sentence the accused to forty (40) years imprisonment on each of the two murder counts. He asked that part of the sentence on the second count be made to run concurrently with the sentence imposed in the first count. This counsel also asked for a declaration of unfitness to possess a firearm and the return of the .308/7.62 mm hunting rifle, serial no. 65 1920 to the lawful owner.

[20] Counsel for the accused submitted that the accused is not a danger to society. He did not do wrong during trial for the four years that he was out on bail. The counsel stated that Simon Kavendja, the owner of the shack house where the incident took place did not testify of any problems in the accused's romantic relationship with his deceased girlfriend. That is correct, but there were in fact problems testified to by the accused himself. This related to witchcraft between the accused and his deceased girlfriend shortly before the incident. According to the accused, a healer told his deceased girlfriend that if she was going to visit the accused's residence in Otjiwarongo, she will die.



[21] The accused drove to Ovitoto taking along his mother and uncle to meet the two deceased ladies in order to sort out the problem. The accused testified that he paid for the healer's services in this regard.

[22] According to the defense counsel the accused is not incapable of rehabilitation. He asked for a sentence that will still allow him to one day come back to society and re-unite with his children and family members.

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

- (a) Count One: Murder dolus directus, read with Act 4 of 2003: 38 years' imprisonment;
- (b) Count Two: Murder dolus indirectus 25 years' imprisonment;
- (c) Count Three: Possession of a firearm without a license on diverse occasions in contravention of section 1 read with sections 1, 8, 10, 38 and 39 of the Arms and Ammunition Act 7 of 1996, read with section 94 of the Criminal Procedure Act 51 of 1977 as amended: Two years' imprisonment;
- (d) Count Four: Possession of ammunition on diverse occasions in contravention of sections 1, 8 10, 38 and 39 of the Arms and Ammunition Act 7 of 1996, read with section 94 of the 'Criminal Procedure Act 51 of 1977 as amended': Two years' imprisonment.
- (e) It is ordered that the sentences imposed on the accused in counts three

and four should run concurrently with the sentence imposed on him in count one.

- (f) In terms of section 10(6) of the Arms and Ammunition Act 7 of 1996, the accused is declared unfit to possess a firearm for a period of two years starting from the time the accused finishes serving his term of imprisonment on this matter.
- (g) In terms of section 34(1) (b) of the Criminal Procedure Act 51 of 1977 it is ordered that the .308/7.62 mm hunting rifle, serial nr. 65 1920 be handed back to the rightful owner, Mr. Gerson Kheimseb.

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A M SIBOLEKA

Judge

## APPEARANCES:

STATE : Mr E. Moyo  
Office of the Prosecutor-General, Windhoek

DEFENSE : Mr B. Basson  
Instructed by Directorate of Legal Aid