

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

SENTENCE

Case no: CC 3/2021

In the matter between:

**THE STATE**

and

**PRICILLIA DAUKELINE STUURMAN**

**ACCUSED**

**Neutral citation:** *S v Stuurman* (CC 3/2021) [2022] NAHCMD 454 (01 September 2022)

**Coram:** CLAASEN J

**Heard:** 17 August 2022

**Delivered:** 01 September 2022

**Flynote:** Sentence – After trial accused convicted of murder with direct intent, read with the provisions of the Combating of Domestic Violence Act – Maternal filicide – Mother repeatedly hit the baby against the hardened floor, smashing his brain in multiple fractures – Violent and cruel repertoire calls for substantial form of punishment – Court finds that factors in mitigation recede against magnitude of other components in sentencing triad and lengthy term of imprisonment is inescapable.

**Summary:** The accused was convicted of murder with direct intent for having killed her biological son of 6 months old. In mitigation she testified of a difficult childhood

as she was abandoned at the age of two years and was taken in by another person. She testified that she has three minor daughters, that she regrets her deed and that the consequences of the deed will accompany her for life. She stated the reason for her having committed the deed was to show the baby's father. He rejected her once she told him that she was expecting his baby and did not accept any parental responsibility. She became frustrated with the situation and took it out on the baby when she consumed alcohol.

*Held* although the accused was deserted in early childhood, she was taken in by someone she came to love and accept as her grandfather. Though not perfect, there was a level of familial bonds between herself and some members of that family, which show that she was not totally deserted.

*Held further* that the accused was not so inebriated that her mental faculties were diminished. Thus it was not a situation of her not knowing what she was doing or acting in an unbalanced emotional state. Nor was it an accident, as she claimed during the trial.

*Held further* that the accused engaged in repertoire of cruelty and violence. Prior to the incident she severely assaulted the baby and expressed an intent to kill him. On the day of the incident she refused to breastfeed the baby, knowing that he had been without milk for half the day. That afternoon, after having been reported to the police, she abandoned the baby at home. Later that night she repeatedly hit him against a hardened floor surface, basically smashing his skull in multiple fractures.

*Held further* that it is an aggravating feature that this baby lost his life not at the hands of a stranger, but at the hands of his biological mother. Ordinarily parents love, care and protect the rights of that child until the child can fend for himself or herself. In this matter is the opposite of the norm in society as it is a parent that maltreated and killed the baby.

*Held further* that the reason provided for the deed being that she was rejected by the baby's father once he learnt of the pregnancy and the father did not accept parental

responsibility. Although it is an unenviable position wherein the accused found herself, it is not a solution to kill the child.

*Held further* that this court has to speak up for the children whose voices have been silenced by their irresponsible and callous parents. The values of society are denigrated when a parent murders an innocent and defenceless child. In such instances the court has to protect the interest of society. It has to intercede and stop this horrendous phenomenon. The only way the court can do this is to impose the kind of sentence that will unequivocally express that those who engage in violent crimes should expect to meet the full rigour of the law.

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### ORDER

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Murder (direct intent) read with the provisions of the Combating of Domestic Violence Act, 4 of 2003 – 28 years' imprisonment.

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### SENTENCE

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CLAASEN J:

[1] The accused was convicted on 11 August 2022 of murder with direct intent, read with the provisions of the Combating of Domestic Violence Act, 4 of 2003, as the deceased herein is her biological son Stiaan Stuurman.

[2] Today this court has to impose an appropriate sentence. In doing that the court will consider the *Zinn triad*,<sup>1</sup> which consists of the nature of the offence, the interests of society and the personal circumstances of the accused. The court also has to be mindful of the objectives of punishments which are, deterrence, prevention, retribution and restoration and blend the sentence with a measure of mercy.

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<sup>1</sup> *S v Zinn* 1969 (2) SA 537 (A).

[3] The accused testified in mitigation of sentence. She was born on a farm in the Maltahohe district. At the age of 2 years her biological mother passed away. The late Mr Cornelius Hansen, took the accused in at his house. He is the only parental figure that she knows. She has seen her own father only once in her life of 29 years. Her educational career ended in grade 8 as she elected to assist Mr Hansen, whom she accepted as her 'grandfather' with his farming activities.

[4] She is the mother of three daughters aged 7, 6 and 5 years respectively. She testified that two of the daughters are currently with Ms Katrina Hanse, the daughter of the late Mr Hanse. The youngest daughter resides with a cousin of the accused at Bethanie. She testified that her daughters' fathers assist by giving goods sporadically. At the time of the incident she and her baby boy had gone to live at Aussenkehr for almost a year. They resided with Estina Hanse and the accused found a job at the shebeen, for which she got N\$60 as a day fee.

[5] She explained that the late Stiaan's father, one Rentie Kahuika, rejected her once he learnt that she was pregnant. He did not accept any parental responsibility. That caused her much pain and frustration. As for her emotional state, she testified that she did not suffer from postpartum depression or depression of any sort, but that she took out her frustrations on the baby whenever she consumed alcohol.

[6] She furthermore apologised to the Hanse family and told the court that she regrets the deed. It is something that will remain with her for the rest of her life, she said. She accepted full responsibility for that and testified that she still has the heart wrenching task to tell her daughters about this when they are older. She also conveyed that she has been incarcerated for 6 months before being granted bail and that she is a first offender.

[7] During cross-examination it was postulated that instead of killing the baby she could have given the baby to one Ms Kooper who wanted the child. The accused said that that she did not know Ms Kooper well and she was reluctant to do so as Ms Kooper was also a drunkard. She was also confronted with a remark that in the eyes of the public it is totally unacceptable that a person who should love and care for a

child is the one to abuse, neglect and kill a child. She agreed with that statement and admitted that it is painful thing.

[8] Mr Engelbrecht, on behalf of the accused, implored the court to take heed to the remorse shown as well as that the accused grew up without the normal bonds formed during childhood. He reminded the court to consider that on the given day she had consumed alcohol which appears to have been done in an effort to soften the setbacks of life. He proposed a sentence of 17 years' imprisonment of which 5 years are suspended to give her an opportunity to reform and be there for her other children.

[9] Regarding the upbringing of the accused, she testified that her grandfather was a caring person that did his best to fulfil the role of both mother and father to her. It also emerged that there was a level of familial bonds between herself and the Hanse family, as she referred to the state witness Estina as her sister and Mr Cornelius Hanse as her grandfather. We also heard that Estina handled Stiaan's burial and took the accused to the grave that once the accused was released on bail. It means that although the new family bonds were not perfect, she was not totally deserted. Mr Hanse acted as a parent to her, a role he filled until his passing.

[10] The court is not persuaded that the accused being a bit intoxicated should count as a factor in mitigation. Having heard evidence the court concluded that the alcohol was not as much as she wanted the court to believe and that about 12 hours had elapsed since she consumed the wine. As such, the court found that she was not so inebriated that her mental faculties were diminished. Thus it was not a situation of her not knowing what she was doing or acting in an unbalanced emotional state. Nor was it an accident, as she claimed during the trial.

[11] Murder is a very serious offence, which ordinarily will attract a custodial sentence. In this case, the cause of death in the post-mortem was recorded as traumatic head injury: multiple intracranial bleeds with overlaying fractures. Dr Uahindua explained that apart from the bleeding and swelling, the baby's skull caved in because the bone was broken in multiple places, the middle of the skull had a fracture that extended from the one ear all the way to the other ear and the base of

the brain was completely fractured. The severe onslaught occurred at approximately midnight and the baby succumbed to his injuries around day break, a day before his first Christmas.

[12] It is a compelling aggravating feature that this baby lost his life not at the hands of a stranger, but at the hands of his biological mother. Ordinarily, parents love, care and protect the rights of that child until the child can fend for himself or herself. In this matter, is the opposite of the norm in society as it is a parent who maltreated and killed her baby. In this regard, Mr Gaweseb submitted that in such instances it is the State who has to step in and protect the interests of that child. He stressed the need for uniformity in sentencing and reminded the court that the incidences of parents that kill their children are on the increase in the country. Therefore he prayed for a deterrent sentence and proposed 35 years imprisonment of which 5 years can be suspended.

[13] During the trial evidence was presented that the accused contemplated killing the baby and orally expressed that intention more than once. Two weeks prior to the incident she had severely beaten the baby. On the morning of the incident she left home early in the morning and left the baby with Estina Hanse. Around lunchtime Estina Hanse brought the baby to her, as by then he had been without milk for a considerable time. Notwithstanding she refused to breastfeed him. Later that afternoon, despite having been reported at the police station for maltreatment of the baby, she again deserted him. She left him outside the house, alone and exposed to the elements. He was merely 6 months old, unable to move or take care of himself. Later that night she carried out her intention by repeatedly hitting the baby against the hardened floor, basically smashing his skull in multiple fractures. It is clear to the court that she engaged in a repertoire of cruelty and violence, which is a disgrace to motherhood. The State characterised the incident as a callous and coldblooded murder and this court agrees with that submission on sentence.

[14] The accused stated that the reason for her having committed the deed was to show the baby's father. He rejected her once she told him that she was expecting his baby and did not accept any parental responsibility. It appears to a common practice that some men jump ship as soon as there is a pregnancy and that causes distress

for the woman caught up in the situation. This is compounded if the pregnant mother cannot provide for the child's needs and does not have any other form of support. However, in this case, the State has through its questions in cross-examination, illustrated that there was another way open to the accused. Although it is an unenviable position wherein the accused found herself, it is not a solution to kill the child. All it accomplished was to make a murderer out of her.

[15] This court fully endorses the sentiments expressed in *S v Seas*<sup>2</sup>, a 2016 matter wherein a mother killed her 3 year old baby, it was held at para 21 that:

'Courts are not only under a duty to uphold the rule of law and to give effect to the fundamental rights of all persons as enshrined in the Namibian Constitution – the rights of children and the right to life – but equally has the duty to reflect society's indignation and apathy towards those making themselves guilty of such heinous crimes.'

[16] In this regard this court has to speak up for the children whose voices has been silenced by their irresponsible and callous parents. The values of society are denigrated when a parent murders an innocent and defenceless child. In such instances the court has to protect the interests of society. It has to intercede and stop this horrendous phenomenon. The only way this court can do it is to impose the kind of sentence that will unequivocally express that those who engage with violent crime in a domestic set up should expect to meet the full rigour of the law.

[17] In view of the prevalence of filicide, this court agrees with the view articulated in *S v Kamutushi*<sup>3</sup> by Liebenberg J that, the time has come for courts to revisit the objectives of punishment when it comes to infanticide and in deserving cases, put more emphasis on deterrence as a sentencing objective to deter other would be offenders.

[18] In conclusion, the court has weighed up all the relevant circumstances. Indeed the court takes note of the quandary wherein the accused found herself, that she expressed remorse, that she will have to live with the burden of having killed her child, that she is a first offender with minor children, and that she spent 6 months in custody on this case. That was weighed against the serious nature of the offence, the

<sup>2</sup> *S v Seas* (CC 17/2017) [2018] NAHCMD 245 (17 August 2018).

<sup>3</sup> *S v Kamutushi* (CC 08/2012) [2013] NAHCNLD 41 (7 July 2013).

brutality of the murder, that it was a defenceless baby who died at the hands of his mother and the societal interests in curbing offenses of this nature. It is one of those matters wherein the factors in mitigation recede against the magnitude of the other sentencing components. That makes a lengthy custodial sentence inescapable, which is something that weighs heavily on this court as the accused remains a mother of three minor daughters who will be without her for a considerable time.

[19] For these reasons the court considers the following sentence appropriate: Murder (direct intent) read with the provisions of the Combating of Domestic Violence Act, 4 of 2003 – 28 years' imprisonment.

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C CLAASEN  
Judge.



APPEARANCES:

STATE:

Mr T Gaweseb  
Office of the Prosecutor-General,  
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ACCUSED:

Mr M Engelbrecht  
Instructed by Directorate: Legal Aid  
Windhoek