

REPUBLIC OF NAMIBIA

REPORTABLE



**HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI
SENTENCE JUDGEMENT**

Case no: CC 11/2015

In the matter between:

THE STATE

and

NDILINAWA GABRIEL

ACCUSED

Neutral citation: *S v Gabriel* (CC11/2015) [2017] NAHCNLD 89 (17 August 2017)

Coram: JANUARY J

Heard: 31 July 2017

Delivered: 17 August 2017

Flynote: **Sentence** – Murder – *dolus eventualis* – First offender – Panga involved – deceased no weapon – Inactive at moment being struck with panga – Self-defence rejected.

Summary: The accused was indicted for murder. He struck the deceased one blow with a panga on the neck, severing the left jugular vein causing the deceased to instantly die. At the time of striking the blow with the panga, the deceased, according to evidence accepted reliable, the deceased was inactive and was just standing, sentenced as reflected.

JUDGMENT ON SENTENCE

JANUARY, J

[1] Mr Gabriel, you are convicted of a very serious offence. We need to maintain law and order in this country, all over the world, and probably elsewhere and that is why courts are there to enforce that. We are all human beings prone to make mistakes. Experience is however something that one can never learn from any book or the best professor at any Educational facility. The lives of all human beings are protected since ancient times and in our country's constitution. Life is a blessing that we must all enjoy without fear, favour or prejudice.

[2] You unlawfully took away the life of a valuable member of society, a person that one could say was your friend or at least an acquaintance, a person that you knew. We are all entitled to defend our rights but provided it is within the limits of the law. You overstepped those boundaries because of anger. All people get angry at times, but they control their anger.

[3] Courts are guided by law, rules of law, principles, practice directives and precedence i.e. previous cases in meting out sentences. You have informed the court of your personal circumstances in that; You are a first offender; 23 years, old born in 1988; Your parents are deceased; your grandmother brought you up; you have one sibling from the same mother but different fathers; you have one child, 6 months old; you paid bail when you or your family could afford it. You spent time about 3 years in custody

which this court takes cognisance of. Your family contributed to the funeral of the deceased according to evidence but that does not compensate for the life of the deceased which cannot be bought back by money and/or compensation.

[4] This court needs to punish you in accordance with the law, considering the crime, your personal circumstances and the expectation of society and also the purpose of punishment which is prevention, deterrence, reformation and retribution.

[5] In the result your sentence is:

25 years' imprisonment.

H C JANUARY

JUDGE

Appearances:**For the State:**

Adv. Gaweseb

Of the Office of the Prosecutor-General**For the Accused:**

Ms Mainga

Of Inonge Mainga Attorneys