

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION  
HELD AT OSHAKATI

SENTENCE

CASE NO: CC 07/2018

In the matter between:

**THE STATE**

v

**PAULUS KAONDI**

**ACCUSED**

**Neutral citation:** *S v Kaondi* (CC 07/2018) [2019] NAHCNLD 38 (5 April 2019)

**CORAM:** SALIONGA J

**Heard on:** 14 March 2019

**Delivered on:** 5 April 2019

**Flynote:** Criminal law: Murder of a female partner in a domestic setting for lying to the accused that she was pregnant — Deceased being accused of infidelity — Conduct of the accused unacceptable — Custodial sentence inevitable.

**Summary:** The accused and the deceased were in a domestic relation. Resided separately on the premises of their parents. They have one child together. The

deceased informed the accused that she was pregnant. Accused invited the deceased to enquire about the pregnancy which was not visible despite months having passed from the date she informed him as well as her infidelity. The accused slapped the deceased to which she responded by beating the accused with a hoe handle. Accused fetched a knife from the room, followed the deceased and stabbed her several times. She succumbed to her injuries.

*Held:* The reason for taking away the deceased's life is senseless.

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### **ORDER**

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1. Thirty (30) years' imprisonment of which 4 (four) years imprisonment is suspended for 5 years on condition the accused is not convicted of murder read with the provisions of the Combating of Domestic Violence Act , Act 4 of 2003 committed during the period of suspension.

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### **SENTENCE**

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SALIONGA, J

[1] On 14 March 2019 I convicted the accused for the murder of his female partner. It is now my duty to consider an appropriate sentence for him. In doing this exercise I will take into account the accused's personal circumstances, the crime and the interests of society. Closely associated with these factors are the objectives of punishment namely deterrence, retribution, prevention, reformation. One of these factors should not be allowed to override the others. However, the exercise depends by and largely on the circumstances of each case.

[2] I will now start with the accused's personal circumstances.

[3] The accused was 28 years at the time of the incident and is now 33 years old. He pleaded guilty to the charge and has since apologized for his deed. He is employed at MEATCO in Windhoek. He earns a salary of N\$2600 after deductions.

The accused has no previous conviction. He is single with two children aged 10 years and 5 months respectively. The 10 year old boy is his child with the deceased in this matter. He is staying with the deceased's mother and accused's aunt is supporting him. Accused spent a year and some months in custody awaiting the finalization of the trial before the matter was struck off the roll. He was then summoned to appear in court last year, 2018.

[4] On the crime, the offence for which the accused is convicted with is very serious and prevalent with no signs of abating. This was a vicious attack where accused used a dangerous okapi knife on a defenseless woman. Clearly, indications are that the accused had direct intent to murder the deceased. The accused's intent to murder can also be deduced from the fact that the accused stabbed the deceased 18 times most of these on her back.

[5] On the day of the incident, the accused invited the deceased during the night to his house. He questioned her about the pregnancy which was not visible despite months having passed from the date she informed him. Accused further questioned the deceased of her infidelity. An altercation ensued resulting in the accused slapping the deceased once on the cheek with an open hand. The deceased responded by beating him with a hoe handle once on the ribs and she ran out of the house. The accused then went in the room, took an okapi knife and followed the deceased outside the house and stabbed her several times all over the body. She died as a result of multiple stab wounds. Accused took back the okapi knife into the room placed it on the table, packed a few items and went to report himself at Onesi police station. The accused was thereafter arrested.

[6] With regards to the interest of society, it appears that the brutality perpetrated by male persons on their female partners is increasing. This is despite the community's continuous plea that it should be halted. The imposition of heavy custodial sentences on accused convicted of these crimes does not seem to calm this tendency. Some male persons continuously appear to be under the impression that they own women and are entitled to end the lives of their female partners whenever it pleases them. This wrong impression is totally unacceptable and must come to an end.

[7] In aggravation of sentence, the prosecution called the deceased's biological mother, Ndinelago Elago. She testified that she had five children and deceased was her first born daughter. She is staying with the deceased's son and is financially depended on the government grant. Accused does not support his child after the death of her daughter. He was however supporting the child before the death of the deceased. She is asking this court to consider a lenient sentence to enable him to come out and assist his children. In this regard she suggested a sentence of 14 years imprisonment to be appropriate. The accused has apologized and she also received the compensation as per the Oshiwambo custom.

[8] Counsel for the prosecution in his submission emphasized the seriousness and prevalence of the offence – murder read with the provisions of Act 4 of 2003. He submitted that the deceased was only 30 years old at the time of her death. Society looks upon the courts to pass befitting sentences. A failure by the courts to impose stiffer and appropriate sentences for violent crimes by men against women, will lead to society losing its confidence in the criminal justice system. Counsel further submitted that the court must impose a sentence that will send a message not only to the accused but to would be offenders that, domestic violence in any form will never be tolerated. It is counsel's further submission that after the accused was struck with a hoe handle, he entered the room and armed himself with an okapi knife. He then followed the deceased and stabbed her 18 times of which 12 stab wounds were on her back. There is no justification what so ever in his actions. Counsel, however conceded that accused was a first offender who pleaded guilty to the charge and has no previous conviction. He asked the court to consider imposing thirty-five (35) years imprisonment as an appropriate sentence in this matter.

[9] In mitigation before sentence, counsel for the accused submitted that the accused took the court into his confidence by testifying under oath in mitigation before sentence. At 33 years of age he is a first offender. He is employed and earns a salary of N\$2600 after deductions. She further submitted that accused has been on warning and not once did he abscond despite being well aware of the consequences. Accused has shown remorse by pleading guilty right from the start of the trial. He also apologized to the mother of the deceased and paid N\$15 000

compensation. The accused's counsel requested the court to consider 15 years imprisonment to enable him to return to society and continue to take care of his two minor children.

[10] In consideration of an appropriate sentence this court has taken the following into account: The accused is 33 years old and has no previous conviction. He has pleaded guilty to the charge of murder read with the provisions of Combating of Domestic Violence Act 4 of 2003 and did not waste the court's time. He is single with two children aged 10 years and 5 months. He has apologized to the mother of the deceased and also paid compensation of N\$15 000 to her family. In addition, the court also took into account the circumstances under which the offence was committed in that; the accused armed himself with an okapi knife in ensuing an unarmed woman. Deceased was viciously attacked with a deadly and dangerous weapon. She was stabbed 18 times of which 12 of those stab wounds were on the back of the deceased. At that point of viciously attacking the deceased, there was no imminent danger upon accused. The deceased is dead and no words of apology can bring back her life. In my view counsel for the State correctly submitted that a failure by our courts to impose appropriate sentences in violent crimes by men against women will in definitely lead to society losing confidence in the criminal justice system. This is so because domestic violence has become pervasive and endemic.

[11] In this regards I took cognizance of the salutary warning expressed by Marais JA in *S v Roberts* 2000 (2) SACR 522 (SCA) para 20 which was quoted with approval in *S v Kaapanda* (CC 9/2010) [2012] NAHC delivered on 31 May 2012 where he stated: that;

'It [the sentence] fails utterly to reflect the gravity of the crime and to take account of the prevalence of domestic violence in South Africa. It ignores the need for the courts to be seen to be ready to impose direct imprisonment for crimes of this kind, lest others be misled into believing that they run no real risk of imprisonment if they inflict physical violence upon those with whom they may have intimate personal relationships'. I agree and endorse the salutary warning.

[12] The murder of the deceased in the instant case was clearly senseless, heinous and a barbaric attack, filled with an element of possessiveness, selfishness and jealousy. It is for the above reasons that a substantial lengthy custodial sentence is inevitable and should be imposed.

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

Thirty (30) years' imprisonment of which four years imprisonment is suspended for five years on condition the accused is not convicted of murder read with provisions of the Combating of Domestic Violence Act, Act 4 of 2003 committed during the period of suspension.

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J T SALIONGA

Judge

## APPEARANCES:

For the State:

Mr Mudamburi  
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For the Accused:

Ms M M Amupolo  
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