

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION

HELD AT OSHAKATI

SENTENCE

Case No: CC 11/2021

THE STATE

v

HILDA  
ACCUSED

TSHEKUPE

IITA

**Neutral citation:** *S v Iita* (CC 11/2021) [2023] NAHCNLD 75 (4 August 2023)

**Coram:** KESSLAU, J  
**Heard:** 1 – 3 August 2023  
**Delivered:** 4 August 2023  
**Reasons** 7 August 2023

**Flynote:** Criminal procedure – Sentence – Maternal filicide – Accused convicted on charges of murder and attempting to defeat or obstruct the course of justice – Accused acted with direct intent – Infants have as much right to protection of life as any other person – Accused committed calculated murder – Sentence of imprisonment justified – Deterrence as sentencing objective.

**Summary:** The accused pleaded guilty to the charge of murder in the form of *dolus directus* that on 13 March 2020 the accused used methylated spirit to poison

her one day old baby, who died as a result. The next day she placed the deceased body in a travelling bag and took same to her mother's village where she burned the corpse. She was convicted on one count of murder, read with the provisions of the Combating of Domestic Violence Act 4 of 2003 and attempting to defeat or obstruct the course of justice on the strength of her guilty plea in terms of s 112(2) of the Criminal Procedure Act 51 of 1977.

In mitigation the accused testified that at the time of the incident, the biological father of the baby denied paternity, and she was unable to support the baby as she could not produce milk to feed the baby neither did she had financial means to support her baby who did not stop crying, as a result of the above factors and the rage she felt toward the biological father of the baby, she decided to end her baby's life.

*Held that* the crime of murder is regarded as one of the most serious in our jurisprudence- deceased life was taken by his mother who, as a parent, should have protected him.

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## ORDER

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Count 1: Murder with direct intent, read with the provisions of the Combating of Domestic Violence Act 4 of 2003 - 22 years' imprisonment of which 5 years' imprisonment is suspended for a period of 5 years on condition that the accused is not convicted of murder or culpable homicide, committed during the period of suspension.

Count 2: Attempting to defeat or obstruct the cause of justice - 12 months' imprisonment.

In terms of s 280(2) of the Criminal Procedure Act 51 of 1977 as amended, it is ordered that the sentence imposed on count 2 be served concurrently with the sentence on count 1.

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## SENTENCE

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KESSLAU J:

[1] The accused pleaded guilty to the charges of murder in the form of *dolus directus* (read with the provisions of the Combating of Domestic Violence Act 4 of 2003) and attempting to defeat or obstruct the cause of justice.

[2] The facts of the case are that on 12 March 2020 the accused gave birth to a healthy baby boy at the Oshakati State Hospital. The hospital provided the accused with methylated spirit for cleaning purposes. On 13 March 2020 the accused and her new born baby were discharged from hospital and they went to her residence in the Uupindi location in Oshakati. The baby was not given a name yet. That evening the accused poisoned the new born baby by feeding him with methylated spirit which resulted in his death.

[3] The next day the accused put the deceased's body in a travelling bag and travelled via Okahao to the village of Okeendapa in the district of Outapi where she burned the body in the mahangu field of her mother. The corpse did not burn completely and the accused then threw the remaining parts into the grass surrounding the mahangu field.

[4] The State submitted, with approval of this court that, in determining an appropriate sentence, the well-established triad of factors being the personal circumstances of the accused, the interest of Society and the crime committed should be considered.<sup>1</sup> Furthermore that the aims of punishment *to wit* retribution, rehabilitation, deterrence and prevention should be considered together with a measure of mercy.<sup>2</sup> While considering the purposes of punishment, this court will endeavour to effect a balance in respect of the interest of the accused and the interest of society in relation to the crimes. The circumstances of a case, however,

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

<sup>2</sup> *S v Rabie* 1975 (4) SA 855 (A).

might require that one or more of the factors could be emphasised at the expense of others.<sup>3</sup>

[5] The accused testified regarding her personal circumstances. At the time she was 26 years old. She is unmarried and was self-employed making timber beds. She has three minor children of which the two elder ones, aged 8 and 6 years respectively, are currently being cared for by her mother. After the offences were committed the accused spent one year in custody before being granted bail. When she pleaded in this court she was pregnant again and gave birth to a baby whilst in custody. This last born is 9 months old and has been cared for by herself in prison. The baby ironically has a multitude of medical problems including a cleft lip and palate, deformed limbs and a heart condition. A medical passport formed part of the evidence indicating frequent medical attention provided to the child.<sup>4</sup> Since her plea of guilty she had spent another year in custody.

[6] The accused is a first offender before this court. She provided an extensive statement in terms of s 112(2) of the CPA in which she explained the events. In her evidence in mitigation she answered questions in a straightforward manner without trying to shy away from her guilt. She testified that the reason for killing the baby boy was that the biological father denied paternity. Furthermore that she failed to produce breast milk and was not in a financial position to buy alternative food for the baby. The baby did not stop crying after their return to her house and that, in combination with the action of the biological father, made her angry. She also felt helpless as she knew her parents are unemployed and could not assist. That led to her decision to end the life of the child.

[7] The plea of guilty by the accused and her evidence in court is a clear indication that her remorse is genuine and that she is showing true contrition for her actions. The accused furthermore has spent a total period of two years in custody awaiting the finalisation of this matter. These factors will be considered in determining an appropriate sentence.

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<sup>3</sup> *S v Tjiho* 1991 NR 361 (HC); *S v Van Wyk* 1993 NR 426 at 448 D-E.

<sup>4</sup> Exhibit 'F'.

[8] Defence counsel, referring to *S v Nghimbwashe*,<sup>5</sup> submitted that the emotional state of the accused at the time of the offense, her personal circumstances and the circumstances under which the offences were committed should be given considerable weight in the determination of sentence. The accused testified that she felt helpless as she was unable to provide for the basic needs of the deceased and furthermore felt anger at the biological father's non-commitment. Her evidence in this regard was not disputed and it will be considered as a mitigating factor.

[9] Counsel for the State, in terms of section 25(3) of the Combating of Violence Act 4 of 2003, handed in an affidavit by the biological grandmother of the deceased which stated that she is still traumatized by the killing of her grandson by the accused and the burning of his corpse in her mahangu field.

[10] The State rightfully submitted that the crime of murder is regarded as one of the most serious offences in our jurisprudence. The deceased was only a few hours in this world before his life was taken away from him by his mother, a person who normally would protect her children at all cost. The accused killed the deceased without making any attempt to get assistance from her family for support. Whilst killing her baby, the deceased acted in a calculated manner, and had time to rethink her actions before his death. The corpse of the deceased was thereafter violated when the accused tried to hide her deed.

[11] In *S v Nghimbwasha (supra)* it was stated that:

'There is no doubt that the unlawful killing of infants is not less serious than that of other children and adults; and a new-born baby, has the same right to life and protection under the Constitution as any other person on Namibian soil would have'.

[12] The interest of Society requires that the accused be punished for her actions. The victim was a day old baby and thus a member of the vulnerable part of society. Furthermore the offense was committed within the setting of a domestic relationship of mother and child. The prevalence of the offense of murder and in particular killing of vulnerable babies is indicative of a morally bankrupt society where

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<sup>5</sup> *S v Nghimbwasha* (CA 62/2016) [2017] NAHCNLD 99 (17 October 2017); See also *Akwenye v S* (CA 117/2010) NAHC 106 (8 April 2011).

parents fail to take their responsibilities.<sup>6</sup> The underlying reason for committing the murder was the fear of raising a child without the support of the father. Considering that the crime was calculated, committed against her own child, and without 'sacrificing the accused on the altar of deterrence',<sup>7</sup> I am of the view that a custodial sentence is appropriate. Furthermore that a partially suspended sentence is needed to prevent the accused from re-offending.

[13] The crimes were committed in close proximity in time to one another with the murder leading to the need for committing the second offense. For that reason, and to extent a hand of mercy towards the accused, the sentences will be ordered to run concurrent.

[14] In view of the above mentioned factors and circumstances the accused is sentenced as follows:

Count 1: Murder with direct intent, read with the provisions of the Combating of Domestic Violence Act 4 of 2003 - 22 years' imprisonment of which 5 years' imprisonment is suspended for a period of 5 years on condition that the accused is not convicted of murder or culpable homicide, committed during the period of suspension.

Count 2: Attempting to defeat or obstruct the cause of justice - 12 months' imprisonment.

In terms of s 280(2) of the Criminal Procedure Act 51 of 1977 as amended, it is ordered that the sentence imposed on count 2 be served concurrently with the sentence on count 1.

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E.E. KESSLAU  
JUDGE

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<sup>6</sup> *S v Muzorongondo* (CC 15/2011) [2013] NAHCMD 236 (6 August 2013); *The State v Kamutushi* (CC 08/2012) [2013] NAHCNLD 41 (17 July 2013); *S v Seas* (CC 17-2017) [2018] NAHCMD 245 (17 August 2018); *S v Stuurman* (CC 3/2021) [2022] NAHCMD 454 (1 September 2022).

<sup>7</sup> *S v Nhinda* 2013 (4) NR 909 (NLD).

## APPEARANCES

For the State: M. Hasheela  
Of Office of the Prosecutor-General, Oshakati

For the Accused: P. Grusshaber  
Of the Directorate of Legal Aid, Otavi