

REPUBLIC OF NAMIBIA



**HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI
JUDGMENT**

Case No: CC 28/2022

In the matter between:

THE STATE

v

JEREMIA HAILASHA

ACCUSED

Neutral citation: *S v Hailasha* (CC 28/2022) [2024] NAHCNLD 116 (23 October 2024)

Coram: KESSLAU J

Heard: 25 September 2024

Delivered: 23 October 2024

Flynote: Criminal Procedure – Sentence – Murder (*dolus directus*) – Sentencing principles – Unequivocal admissions made by the accused.

Summary: The accused was convicted by this Court on a charge of Murder with direct intent. The accused initially raised self-defence claiming that he was unlawfully attacked by the deceased. However, on the date of trial the accused retracted his initial defence and made extensive admissions in terms of s 220 of the Criminal Procedure Act 51 of 1977, as amended. These formal admissions and

documentary evidence presented by the State were sufficient for a conviction of the charge of murder with direct intent. Sentencing principles restated and applied.

ORDER

1. Murder (*dolus directus*) – 22 years' imprisonment.

JUDGMENT

KESSLAU J

[1] The accused was convicted on a charge of Murder. The matter is before this court for sentencing.

[2] In determining an appropriate and suitable sentence, I will take into account the triad of factors being the interest of society, the personal circumstances of the accused and the crime committed. The aims of punishment *to wit* retribution, rehabilitation, deterrence and prevention will form part of the factors to be considered during sentencing. An element of mercy will form part of sentencing.¹

[3] This court will also endeavour to balance and harmonize the above factors during sentencing whilst being mindful of the fact that in some circumstances, it might be necessary to emphasise one factor at the expense of another.²

[4] In an attempt to satisfy the principle of uniformity, I have considered sentences imposed for similar offences whilst keeping in mind that the circumstances in each matter are unique.³

[5] The personal circumstances of the accused was placed before court by counsel. The accused is 33 years old and a first offender. He had been in a relationship for the past year. The accused stayed with his father up to the age of 18.

¹ *S v Zinn* 1969 (2) SA 537 (A); *S v Tjiho* 1991 NR 361 (HC); *S v Rabie* 1975 (4) SA 855 (A); *S v Ganes* 2005 NR 472.

² *S v Van Wyk* 1993 NR 426.

³ *S v Van Wyk* (CC 26/2022) [2023] NAHCNLD 114 (2 November 2023); *S v Katale* (CC 5/2021) [2022] NAHCNLD 80 (2 September 2022). *S v Shinana* (CC 10-2011) [2018] NAHCMD 207 (12 July 2018); *S v Shikerete* (CC 15/2021) [2023] NAHCNLD 132 (1 December 2023); *S v IK and another* (CC13/2021) [2023] NAHCMD 587 (22 September 2023).

After the completion of Grade 9, he dropped out of school and relocated to stay with his mother. His father is deceased whilst his mother is a pensioner. He has five siblings. The accused fathered two children who are residing with their biological mother in Katima Mulilo. He supports them financially whenever possible. The accused was previously employed in various positions as security guard, vendor and labourer.

[6] After his arrest, the accused spent a period of 2 years and three months in custody before being released on warning. The accused pleaded not guilty on the first day of trial, however, the very next day, before any witnesses could be called by the State, gave a full and complete plea explanation admitting to all the allegations. The effect of these unequivocal admissions was similar to that of a guilty plea. The personal circumstances of the accused, the fact that he is a first offender and the time spent trial-awaiting, will be considered to establish an appropriate sentence.⁴

[7] The State argued that the accused made the extensive admissions only on the date of trial, which might have been because the evidence was overwhelming. That may be the case, however, from the preceding actions of the accused, I am of the opinion that he regretted his actions much sooner. Immediately after the attack, the accused reported what he had done to the neighbours. When the police arrived he handed over the murder weapon and cooperated with the investigation. The extensive admissions he made in this court saved his family and neighbours the trauma of reliving the events in court. That in itself took courage, and in my opinion, is an indication of some remorse for his actions.

[8] The crime was committed because of a senseless argument between the accused and his brother. Earlier the day the two shared a traditional drink with their mother at a nearby bar. Later, during dinner, the two got into an argument on whether the accused was present when a dog bit the deceased. The accused was called a liar and a coward by the deceased. The deceased also sworn at the accused and used vulgar language. These words provoked the accused. He went to collect a panga from a nearby room and returned to the dinner area where, in the presence of the rest of the family, he started hitting the deceased on the head with the panga. The deceased then ran into the mahangu field in an attempt to escape.

⁴ *S v Hange* (CC12-2012) [2015] NAHCMD 90 (16 April 2015).

The accused followed his brother into the field and further attacked him with the panga with more blows to the head. From the photo plan⁵ it is clear that the deceased died in the most gruesome manner as his head was completely split open with parts of the brain tissue exposed. The brothers were not sharing a house at the time and thus, the State did not pursue a conviction read with the provisions of the Combating of Domestic Violence Act 4 of 2003.

[9] The State argued that the crime was premeditated while counsel for the accused submitted it was committed in the spur of the moment. I am not in agreement with either. It cannot be said that it was pre-planned in that extensive time was spent before the commission whilst, on the other hand, the accused had ample time to reconsider his actions before and while collecting the panga and at the time when he was running after the deceased into the mahangu field.

[10] Counsel for the accused argued for a partially suspended sentence and referred to the matter of *S v Neromba*⁶ wherein the accused was sentenced to 20 years' imprisonment of which five years were suspended. The circumstances in that matter is distinguishable from the case before court in that the accused in the *Neromba* (supra) matter was of old age who unreservedly pleaded guilty.

[11] The State suggested a term of imprisonment of 32 years' and referred this court to *S v Amukugo*.⁷ That matter can similarly be distinguished from the matter at hand, considering that the accused in the *Amukugo* (supra) matter was convicted of murder read with the provisions of the Domestic Violence Act 4 of 2003. Additionally, that accused did not make any formal admissions which resulted in a full trial.

[12] In considering the interest of society, it is the duty of this court to uphold the law whilst at the same time reflecting society's resentment and aversion towards those making themselves guilty of heinous crimes.⁸ It is furthermore important to impose a sentence that will deter the constant wave of violent crimes. The prevalence of murder in this jurisdiction calls for a deterrent sentence and outweighs

⁵ Exhibit 'M' photos 8 and 9; Exhibit 'N' photos 2 to 6.

⁶ *S v Neromba* (CC 12/2022) [2023] NAHCMDCR 483 (8 August 2023).

⁷ *S v Amukugo* (CC 08/2021) [2022] NAHCNLD 134 (21 December 2022).

⁸ *S v Seas* (CC 17/2017) [2018] NAHCMD 245 (17 August 2018).

the personal circumstances of the accused. Therefore, the accused cannot escape a custodial sentence.

[13] After careful consideration of the above principles, factors and circumstances the accused is sentenced as follows:

Murder (*dolus directus*) – 22 years' imprisonment.

E.E. KESSLAU

JUDGE

APPEARANCES

FOR THE STATE: M. N. T. Hasheela
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FOR THE ACCUSED: M. B-J. Adams
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