REPUBLIC OF NAMIBIA REPORTABLE

HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CC 14/2014

In the matter between:

THE STATE

and

WILLEM KEFAS TITUS **ACCUSED**

Neutral citation: *State v Titus* (CC 14/2014) [2016] NAHCMD 113 (19 April 2016)

Coram: USIKU J
Heard: **10 March 2016**
Delivered: **19 April 2016**

Flynote: Criminal procedure – Sentence – murder – Domestic violence – should be aggravating factor in sentencing – Such violence prevalent in Namibia society - In sentencing courts must reflect intolerance of violence against women and children – Personal circumstances of accused important – However, courts wanting to send out a clear message to society that such conduct will not be allowed to continue – Period spend in custody before the finalization of the case be taken into account when sentencing – Lengthy custodial sentences with part thereof suspended.

Summary: The accused was convicted of murder of his live in girlfriend after he had pleaded guilty on the charge. The accused faced a charge of robbery with aggravating circumstances on the second count to which he was convicted after the trial. The court concluded that lengthy custodial sentences coupled with suspended sentences would be appropriate sentences under the circumstances.

ORDER

(a) Count (1) – Murder – Accused is sentenced to 40 years imprisonment of which 10 years are suspended for five years on condition that the accused is not convicted of murder or any offence involving violence committed during the period of suspension.

(b) Count (2) – Robbery with aggravating circumstances – accused is sentenced to 10 years imprisonment of which two (2) years imprisonment are suspended for (5) five years on condition that accused is not convicted with the crime of robbery with aggravating circumstances , committed during the period of suspension.

The sentences are ordered to run consecutively.

JUDGMENT

USIKU J

[1] The accused have been convicted of murder with direct intent on the first count. He was also convicted on a charge of robbery with aggravating circumstances on the second count. He murdered his live in partner Antoinette Lydia April on the 1 March 2012 by stabbing her several times all over the body.

[2] Furthermore that the accused stole from her a blue denim material bag and/or a wrist watch and or a nokia cellphone and/or jewelry that being rings, necklaces and that aggravating circumstances as defined in section 1 of Act 51 of 1977 were

present in that the accused was before, during or after the commission of the crime wielding a dangerous weapon, namely a knife and inflicted grievous bodily harm to the deceased, Antoinette Lydia April.

[3] In aggravation of sentence Mr Lutibezi who appeared on behalf of the state called two witnesses. Ms Katrina April aged 77 years and the biological mother of the deceased testified that she came to know the accused who used to reside at the deceased residence before she died on the 1st of March 2012. Also that the deceased had three children who she used to support. She too was being supported by the deceased at the time of her death. The deceased was the main bread winner of their family. The children have to struggle as they have been touched a lot by their mother's death at the hands of the accused. Ms April requested the court to sentence the accused to a custodial sentence for a lengthy period of time.

[4] She also narrated how the accused had been mocking them when they meet at court. He has so far not asked for any forgiveness. Neither did he give any token towards the deceased's funeral expenses.

[5] In cross examination Ms April confirmed that since the accused's arrest they have never come face to face in order to engage in any discussion. She however persisted that accused had been making mockery of them which means he had no feelings about their loss.

[6] Another witness Ms Hendrina Goeieman who use to be the deceased's neighbor testified that she had known the accused who she referred to as a very aggressive man. He never wanted the deceased to speak to friends. He quarreled unnecessarily with the deceased and her children. Accused had made threats that he would kill the deceased. Ms Goeieman specifically testified about an incident on the 12 December 2011 when the accused was requested to help clean meat, where after the accused had told them that he would kill the deceased before the end of March 2012. These threats were communicated to the deceased's children. Indeed the deceased was killed on the 1 March 2012.

[7] In cross examination Ms Goeieman persisted that the threats to kill the deceased were conveyed to the children as well as the deceased upon return from the farm. She had also open cases twice when the accused had made threats towards her own children. The reason why she communicated the accused's threats towards the deceased was meant for the children to report a case to the police.

[8] On the other hand, the accused opted to testify in mitigation of sentence. He is aged 49 years old currently. At the time of the commission of the offences he was 45 years. He is not married. He confirmed to have been in a domestic relationship with the deceased at the time of her death. He has 8 children by different mothers. The first child had since gotten married and is employed. The last born is a minor and is schooling at Rehoboth in grade 6. He does not know the name of the school the child is attending. The mothers of the children are the once responsible for their children's welfare. He had previously assisted the children whenever he could.

[9] His mother is still alive but his farther died in 2009. His mother is very old and is receiving old age pension. She lives alone but he used to care for her by giving her money from time to time. He attended school up to grade 7 and dropped out. He had been employed as painter prior to his arrest in 2012 on the date of the incident. He does not have any previous convictions and generally consider himself to be a good man. He has been in custody for four years and some days without bail.

[10] About the incident accused confirmed that the deceased died as a result of his conduct. He had pleaded guilty to the charge and is heartbroken as he took away somebody's child. He handed in a letter addressed to the court in which he pleaded for forgiveness from the court and also from the deceased's family as well as from the nation at large. He claimed to be a changed person and regrets what he had done.

[11] In cross examination accused confirmed that the deceased was his girlfriend and they lived together as men and wife also that he only wrote the letter a day before he came to court. The letter is specifically addressed to the court and not to the deceased's family as such. From the time of his arrest until the case started he had offered nothing whatsoever to the deceased's family, neither did he sent any

representative to convey what he felt about the death of the deceased. He confirmed that he is fearing to be sentenced and as a result have pleaded for mercy. Accused denied to have mocked the deceased's family at court. He also denied to have made threats that he would kill the deceased comes March 2012. Accused could not explain why he did not offer his apology earlier on.

[12] In submissions Mr Ujaha reminded the court about the triad and that the court should try and balance the competing interests. He further submitted that the accused could be reformed, as he was a first offender who did not waste the court's time. He tendered a plea of guilty and have shown remorse and contrition. Accused is not a danger to society. Though conceding that accused have been convicted with serious crimes, he requested the court to consider ordering the sentences to run concurrently as the offences were committed at the same time. The court was referred to several case law on point.

[13] On the other hand Mr Lutibezi submitted that offences of murder and robbery are serious in nature. They are also prevalent within the court's jurisdiction. The court was ask to impose deterrent sentences.

[14] It was further submitted by the state that the victim was a defenseless women, and was attacked with a knife and stabbed several times. The accused and the victim had been in domestic relationship. She was left to die in a cruel manner whatsoever.

[15] According to the state, the murder was premeditated. The accused had threatened to kill the deceased already in December 2011 and he in fact went ahead and killed the deceased on the 1sth of March 2012, as per his threat that he will kill the deceased before the end of March. The court was also referred to several case law on point.

[16] When it comes to sentencing the court had to consider the crime committed, the offender and the interest of society. There is no doubt that the offences with which the accused have been convicted are serious. The sanctity of life is a fundamental human right enshrined in the law by the Constitution which must be

respected and protected by all, *S v Kadhila* cc 14 of 2014 delivered on 12 March 2014.

[17] The manner in which the offences were committed was very brutal. Evidence presented before court shows that the victim was stabbed with a knife about eight times. Accused did not show any mercy towards her. It thus call for severe sentences to match the serious nature of the offences the accused have been convicted of.

[18] Punishment must indeed fit the criminal as well as the crime, be fair to society and be blended with a measure of mercy according to circumstances, *Khumalo* 1973 (3) SA 697 (A) Holmes JA. The accused is a first offender at the age of 49. That fact should indeed be considered and deserve some weight in mitigation. It is trite that the time spend in custody awaiting trial finalization leads to a reduction in sentence. However, given the current levels of violence and more specifically serious crimes against women and children in this country, it seems proper, that in sentencing the emphasis should placed on retribution and deterrence. Retribution may even be decisive. In my view an appropriate sentence actually means a sentence in accordance with the blame worthiness of every individual offender.

[19] On the issue of remorse, accused did not show any remorse, as he only came up with the letter in which he claimed to apologize at an eleventh hour. It could have been more meaningful if he had expressed remorse immediately after the killing of the deceased. Remorse is usually expressed both in deeds and words. His expression of contrition comes far too late for it to ring true.

[20] In the circumstances of this case, I believe that an appropriate sentence would be the following:

(a) Count (1) – Murder – Accused is sentenced to 40 years imprisonment of which 10 years are suspended for five years on condition that the accused is not convicted of murder or any offence involving violence committed during the period of suspension.

(b) Count (2) – Robbery with aggravating circumstances – accused is sentenced to 10 years imprisonment of which two (2) years imprisonment are suspended for (5) five years on condition that accused is not convicted with the crime of robbery with aggravating circumstances , committed during the period of suspension.

The sentences are ordered to run consecutively.

D N USIKU

Judge

APPEARANCES:

THE STATE:	Adv C K Lutibezi
Instructed by:	Office of the Prosecutor-General, Windhoek
ACCUSED:	Mr Ujaha
Instructed by:	Directorate of Legal Aid, Windhoek