



REPUBLIC OF NAMIBIA

CASE NO: CC 21/2006

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

and

**STONEY RAYMOND NEIDEL
SYLVESTER LAURENCE BEUKES
GAVIN BEAUKES**

**FIRST ACCUSED
SECOND ACCUSED
THIRD ACCUSED**

CORAM: DAMASEB JP

Heard on: 08 – 09/11/2011

Delivered on: 21/11/2011

JUDGMENT ON SENTENCE

DAMASEB JP

The triad:

[1] In imposing sentence, the law requires the Court to have regard to the personal circumstances of the accused, the interests of society and the seriousness of the offence.

[2] A sentencing judge must never lose sight of the importance of blending his or her sentence with a measure of mercy. In my view, exercising mercy does not mean that the Court must abdicate its responsibility to protect society; nor does it mean that convicted prisoners must always get away with light sentences. Properly construed, what it means is that if the facts and circumstances of the case call for it, a Court must blend its sentence with some mercy and give the accused another chance in live by imposing a sentence that either keeps the convicted person out of prison or returns the convict to the community after only a brief period in prison. In certain cases that may well not be possible in view of the seriousness of the offence and the interests of society which require deterrent treatment of the offender. In exercising mercy the Court is cognisant of the reality that we all, as human beings, err and allow certain anti-social impulses to get the better of us. An orderly and civilised society is however dependant on each of its constituents exercising a tolerable measure of impulse control, especially conduct that is brutal and evil in character and scale. Impulse control is, after all, that which separates us humans from animals. If all impulses, however abhorrent were to be overlooked we would lose our claim to humanity.

The offences and role of each accused

[3] Before I deal with the personal circumstances of the accused, I want to briefly recount the circumstances in which the offences had been committed and set out the role of each

accused. 8 people died at farm Kareeboomvloer on 5 March 2005. We know from the admissions made by Accused 2 how that happened: Accompanied by his brother, Accused 3, they arrived at the farm of the late Mr and Mrs Erasmus on the 4th of March 2005. Accused 2 admitted that he had gone to the farm intending to kill the Erasmus couple. He stated that he had been hired by the son of the couple to kill the Erasmuses. I found that not to be the case. Accused 2 also maintained that Accused 3 did not know about the intent with he (Accused 2) had gone to the farm. His version was that Accused 3 did not participate at all in the commission of the murders at the farm and that he had tied him to a pole while he committed the murders and only untied once the evil deed was done and, under duress using a firearm, made Accused 3 assist him to load the stolen items on the Hyundai pick-up and trailer (also stolen) and drove with those items to Rehoboth where they left some of the goods with Accused 1 and transported the rest to farm Areb where Accused 1 had been farming.

[4] I rejected the version advanced by both Accused 2 and 3 that Accused 3 was an unwilling participant in the commission of the crimes at farm Kareeboomvloer. I convicted Accused 3 based on the doctrine of common purpose with accused 2 in connection with all the offences of which Accused 2 was found guilty. It is important to repeat here how I came to that conclusion, because it is relevant to the sentence in respect of Accused 3. First, there is the admission by Accused 3 to a police officer that he did not kill anyone at Kareeboomvloer and that he only pointed a firearm at the people who were murdered. Secondly, forensic evidence adduced at trial was to the effect that the shoes which Accused 2 had worn at the scene of the crime had on them high velocity

human blood spatter and that such circumstance was only consistent with him being in close proximity to human blood exiting from a human being whose body was penetrated by a projectile fired from a firearm. Both circumstances demonstrate the falsity in the version that during the killing Accused 3 remained tied to a pole. In addition, I was satisfied that Accused 3 had more than ample opportunity to distance himself from Accused 2 and to demonstrate that he was an unwilling participant in respect of the crimes committed at Kareeboomvloer. When they returned to Rehoboth after the crimes were committed, he displayed conduct that is inconsistent with innocence. Even by his own admission, he made no report to anyone about the manner in which he allegedly was made to witness the gruesome mass murders by Accused 2. He also displayed no sign in his behaviour justifying such a conclusion: For example, upon returning home he was seen by his sister Cloete who testified at the trial, listening to music while seated in the living room and while Accused 2 was not at home. Cloete noticed no discomfort or any other character change in Accused 3.

[5] As for Accused 1, he vehemently denied any for-knowledge of the theft committed at the farm by Accused 2 and 3. I found otherwise. I also found Accused 1 guilty on the basis of common purpose with Accused 2 and 3 in respect of the theft count and the one of possession of firearms without a licence - fire-arms which he admitted to receiving from Accused 2 and 3. I was satisfied that Accused 1 had planned the execution of theft with Accused 2 and 3 well in advance and that he agreed to receive and retain stolen items from them. The theft involves 22 goats and 2 sheep; well in excess of 150 individual items which include food, farm implements and tools; medicine for animals;

kitchen ware; beddings; kitchen ware and clothes. A sizeable number of these items were found at the home of Accused 1. I had found that Accused 1 had participated in an elaborate stratagem with Accused 2 and 3 to create the belief that he had stopped farming at Areb and wanted to return there with his livestock and in the process sought to enable Accused 2 and 3 to join him at Areb. With that false belief created in the mind of the traditional leader responsible for the area, Accused 1 was the first person, after the commission of the crimes, to be called by Accused 2 and 3 after they left Kareeboomvloer. In the stealth of night the Beukes brothers came to Accused 1's home in Rehoboth, dropped off some stolen goods and transported, accompanied by accused 1 - still under cover of darkness – the rest of the stolen items and the stolen livestock (together with Accused 1's livestock which at the time were in Rehoboth) to Areb. At Areb the stolen livestock were found mixed with that of Accused 1. What is significant about the culpability of Accused 1 in the sentencing context, is his own admission that his brother, Wambo, upon seeing the goods brought to Areb at the place where Accused 1 and Wambo lived, immediately asked that the goods be removed away from that place. Accused 1 at no point, although he said he formed the suspicion that the non-livestock items were stolen, sought to disassociate himself from Accused 2 and 3.

[6] Those are the circumstances in which I convicted the prisoners now standing before me to be sentenced. Today it is my duty to impose a sentence on each of them which meets the dictates of justice.

The personal circumstances of the Accused

Accused 1

[7] I found you guilty on Count 13: Theft and Count 14: Contravening sec. 2 read with Sections 1, 38(2) and 39 of Act 7 of 1996 – involving possession of two fire-arms without a licence. You testified on your own behalf in mitigation of sentence. Counsel representing you concedes that these are serious offences.

[8] You are 34 years old and a first offender. You attended school only until grade 7 and largely fended for yourself as your parents could not do so due to their drinking habits. Your wife with whom you have a school-going 9-year old son died while you were in prison in connection with this case. Your son lives with the maternal grandmother and you state that your incarceration will deprive him the love and care of the only parent alive. You have not placed any evidence before me though that the maternal grandmother is not in a position to provide for the boy.

[9] You also testified that you are concerned about your livestock being dissipated in the event of your incarceration as they are your only means of income. You testified that your livestock earned you between N\$2000 and N\$ 4000 per month. You also informed me that you had not had full information about your livestock since being arrested in connection with this matter. You testified that you are remorseful over the deaths that occurred at Kareeboomvloer, while maintaining that you had not acted in common purpose with Accused 2 and 3 in connection with the theft count of which I found you guilty. As I understand it, you have no reason to feel remorse over the theft charge as

you are innocent. You maintain that the Beukes brothers had approached you in connection with livestock to be transported to Areb and that you had had no idea that the livestock were stolen from the Erasmus's farm. With regard to the 2 rifles forming the subject of the second conviction, you stated under cross-examination that you took them from the Beukes brothers on the understanding that they formed part of the inheritance and that you had hidden them in the bush to avoid possible harm to the children who lived at your home at Areb.

[10] I was urged by counsel for Accused 1, in mitigation, that Accused 1 did not benefit personally from the stolen goods since all the goods were recovered. His counsel also submitted that Accused 1 cooperated with the police and willingly pointed out the stolen goods to them, including the rifles which he had hidden at Areb. Counsel also submitted that the State had not proved that Accused 1 knew that the goods were stolen in the course of a robbery that also resulted in murder. Mr Isaacks for Accused 1 submitted, based on the evidence given by the Accused, that the estimate of the value of the stolen livestock is N\$ 6000 – an estimate given by the Accused based on his experience of farming with small stock. Mr Isaacks also submitted that the State having failed to lead evidence of the value of the other goods (except in respect of the two rifles valued by an expert gunsmith called by the State at a combined value of N\$ 4900) covered by the theft conviction, the Court must approach sentence as if the rest of the items had no value. He argued that considering that Accused 1 was charged and found guilty of one count of theft, I must treat the conviction of theft of stock and of the firearms as one count. Mr Isaacks argued further that Accused 1 is not a danger to society and that no purpose

would be served by his removal from society through imprisonment- suggesting that a suspended sentence would be a strong deterrent for him.

Aggravating factors: Accused

[11] Mrs Verhoef, for the State, submitted that it is an aggravating factor that Accused 1 was found guilty on the basis that he had well in advance planned the theft with Accused 2 and 3. Counsel pointed out that it was he who took accused 2 and 3 to the headman responsible for Areb to lay the basis for the arrival of the stolen livestock and the goods in the circumstances that I have already set out and described as an elaborate stratagem. Mrs Verhoef submitted that it was proved, and found by the Court, that Accused 1 took possession of the stolen goods after the commission of the crime and went to hide the firearms; mixed the stolen animals with those that belonged to him, and transported them during the night. Counsel also pointed out that it is an aggravating circumstance that Accused 1 had ample time to disassociate himself from Accused 2 and 3 but failed to do so.

[12] The State further submitted that in light of his own testimony that he earned N\$2000 – N\$4000 from his farming activities, Accused 1 was not driven by want to commit theft- considering that he enjoyed an income not enjoyed by many in Namibia. By Accused 1's own estimate of the value of the stolen livestock, there is only a difference of N\$3000 between the value given to the stolen items by Mr Benjamin Coetzee (N\$9 000) called by the State, and the estimate of N\$6000.00 given by the Accused.

[13] While conceding that in view of the most recent decisions of the High Court of Namibia¹ I must, in respect of the theft of livestock, sentence the Accused as if there was no minimum prescribed sentence for the theft of livestock above the value of N\$ 500.00. Mrs Verhoef submitted that I must not lose sight of the fact that in introducing the minimum sentence *regime* through the Stock Theft Act,² the Legislature intended that the offence of theft involving livestock be treated seriously and to attract heavier penalties: Counsel argued that although the minimum sentence of 20 years for a first offender convicted of stock valued above N\$500 has been struck down, the inescapable conclusion to be drawn is that the Court must give effect to the Legislative intent and impose a direct term of imprisonment for an appropriate length of time applying the ordinary sentencing principles, although unfettered by the minimum sentencing *regime* imposed by sec.14.

Accused 2 and 3

[14] I found you guilty on 8 counts of murder; Count 9: Housebreaking with the intent to rob and robbery with aggravating circumstances as defined in section 1 of the Criminal Procedure Act, 51 of 1977; Count 10: Robbery with aggravating circumstances as defined in section 1 of the Criminal Procedure Act, 51 of 1977; Count 11: Defeating or

¹ *Protasius Daniel and Anor v The AG & 2 Ors*, Case No. A 238/2009 and A430/2009 delivered on 10 March 2011, striking down as unconstitutional sec.14 of Act 12 of 1990 prescribing a minimum sentence of 20 years for theft of stock of the value of above N\$500 for a first offender, and *The State v Ismael Huseb* Case No. CR 95/ 2011 delivered on 21/10/11 holding that the appeal by the PG to the SC against the HC judgment in the *Protasius* matter does not suspend the invalidation of sec 14 of Act 12 of 1990.

² Act 12 of 1990. It was conceded on behalf of Accused 1 sec.12 of this Act applies in respect of the conviction involving theft. It states: '' *The provisions of this Act applies in every case where an accused is indicted, summoned or charged in respect of the theft of stock or produce, notwithstanding the fact that this Act is not referred to in the indict indictment, summons or charge.*''

Obstructing or Attempting to Defeat or Obstruct the Course of Justice; Count 12: Arson; Count 14: Contravening Section 2 read with Sections 1, 38(2) and 39 of Act 7 of 1996 – Possession of Fire-arm without a licence ; Count 15 possession of ammunition in contravention of section 33 read with Sections 1, 38(2) and 39 of Act 7 of 1996.

Personal Circumstances of Accused 2 and 3

Mitigation: Accused 2

[15] This Accused did not testify on his own behalf in mitigation of sentence. His counsel, Mr Iipumbu, submitted in mitigation that Accused 2 was a single father of two children who will be deprived of parental care if a long term of imprisonment is imposed. Accused 2 is a first offender and was only 20 years old when he committed the crimes. He has been in custody ever since. Accused 2 expressed, through his counsel, that he sympathises with the families of the deceased persons, the Kalkrand community and the Namibian community at large. It was stated on his behalf that he accepted his responsibility for the events at Kareeboomvloer but that his stay in prison since arrest had become a learning curve for him and that has come to learn to appreciate the sanctity of human life.

Accused 3

[16] Accused 3 who testified in mitigation of sentence on his own behalf, testified that he is currently 30 years old and a father of 3 children. Accused 3 is a first offender. He testified that if incarcerated, his children will grow up without a father with the real risk of there being no one to look after them. Accused 3 said he felt and wishes to express his

deepest remorse over the deaths of the deceased persons, not because he was responsible for the killings but because of his presence at the crime scene at the wrong time and place. Under cross examination, Accused 3 testified that he could not stop his brother from committing the crimes as he was tied to a pole while Accused 2 committed the crimes. It was submitted by Mr Mbaeva on his behalf that Accused 3 did not benefit from the criminal enterprise since all the stolen properties were recovered.

Aggravation: Accused 2 and 3

[17] In aggravation, the state led evidence from family members and friends of the deceased persons who testified about their deep sense of loss and hurt at the loss of friends or family members. It was moving testimony indeed and shows clearly how the killing at Kareeboomvloer was not only senseless but affected the lives of living human beings.

[18] Mrs Verhoef, for the State, submitted in respect of Accused 3 that he had paid the bail for Accused 2 while incarcerated in connection with the charges laid by the late Mr Erasmus and in that way set in motion the killing of people which included the wiping out of a whole family. As for Accused 2 she pointed out that he had, while incarcerated at Kalkrand, decided to take revenge against Mr Erasmus and went about planning and executing the present crimes. She also submitted that the youth of Accused 2 at the time of the commission of the crimes had no part to play. The state relied on the case of **S v Ceaser 1977(2) SA 348 (A)** and submitted that the age of Accused 2 should not be a mitigating factor as he acted on his own and did not act under the influence of an older

person. She further agreed that there is no evidence in the present case to show the extent to which youthfulness affected the commission of the crime committed by Accused 2. The fact that Accused 2 used drugs having already formed the intent to kill before he got to Kareeboomvloer, was an aggravating, not mitigating, factor.

[19] An even more aggravating circumstance, she submitted, was that farm Kareeboomvloer was isolated, situated in a place where others could not easily access the farm and thus making its inhabitants particularly vulnerable.

[20] Mrs Verhoef also made reference to the fact that the manner in which the murders were committed was very brutal. People were either shot and killed execution style or were burnt alive, alternatively shot and left to die in fire while still alive. A young girl of 4 years and a pregnant woman were also not spared.

Court's emphasis of aggravating factors

[21] Accused 2 and 3 on the day you perpetrated the crimes I found you guilty of, you made two conscious decisions: the amount of people you were going to kill, and how you were going to kill them. Both reveal your evil minds. As regards the first, you chose to kill as many people as possible – in fact everyone who was at the farm: no one was to be spared – not children, not even a pregnant woman. As for the second: you chose to carry out your crimes in the most brutal fashion imaginable. It is clear to me that you wanted your victims to suffer emotionally and physically. You wanted them to know that they were going to die and to die experiencing unthinkable pain.

[22] In short, you tortured your victims. You truly are an embodiment of evil. You have committed crimes the likes of which, I hope, I will not have the misfortune to preside over during the remainder of my judicial career. That you are a menace to society is a moot point. I shall fail in my duty and would be acting most irresponsibly if I were not to remove you from society for a very long period of time. Nothing I find in the evidence and the facts of this case and nothing about your personal circumstances warrant mercy for your actions. I can only hope that the sentences you receive today at the bar of justice will provide some solace, however small, to the families of those whose lives you took-families and friends who testified before me during the sentencing phase and spoke about the senseless loss of lives and the pain caused to those who knew or were related to the deceased.

[23] It is now recognised by the courts that murders committed on farms should be treated by the courts as deserving severe penalties on account of the vulnerability of those who live on farms because of the isolation from the rest of the community. Although you both were relatively young when the crimes were committed, the fact of your youthfulness had no bearing on the commission of the crimes and do not justify my treating you leniently. The manner of execution of the victims named in the eight counts of murder was particularly cruel and brutal. You shot some of your victims at close range or burnt them alive. You did not even spare a 4-year old girl or a pregnant woman. Both of you have shown no remorse for your actions. Accused 3 testified in mitigation of sentence and suggested that he felt bad that he was present when the people were killed but that he did not do the killing. That is no remorse and appeared to me more like self-

pity for the fate that awaited him. Self pity by the accused for the consequences that are to follow upon his actions is no basis for leniency toward him.

[24] I was further guided by the following principles as I went about considering the sentences against you.

- (i) Where there are multiple counts the court must strive not to impose sentences for the individual offences that render the overall sentence too severe. That may be achieved by ordering that the sentences run concurrently, taking together various counts for the purpose of sentence or, if the interests of justice demands, treating the incident as one whole and imposing a composite sentence in order to avoid duplication and resultant undue harshness: *Fourie v S* [2001] 4 All SA 365 (SCA) par [20]. Accused 2 had admitted that he committed the murders in the following sequence: He first killed the Erasmus couple, thereafter he killed the five people whom he at gunpoint led into the outside room and then shot and set the room alight. After forcing Sunnybooi Swartbooi to help him and Accused 3 load the stolen goods on the stolen vehicle and trailer, he took Sunnybooi into the farm house and then killed him. Considering the special aggravating circumstances of this case, I have decided against treating the incident as one whole and imposing a composite sentence in respect of especially the murder counts. I do so conscious of the fact that between the one set of murders to the other, Accused 2 and 3 had a choice not to go ahead with the next. Accordingly, it would be improper and not in

keeping with the dictates of justice to treat all eight murders as one composite or one whole deserving of only one sentence.

- (ii) Long-term imprisonment is justifiable only if its purpose is to protect the community through the prolonged removal of dangerous criminals from the community: (*S v Cele* 1991 (2) SACR 246 (A) at 248i.

I now sentence the Accused Persons as follows, ending with Accused 1.

[25] **ACCUSED 2:**

Count1: Murder: 45 years

Count 2: Murder: 45 years

Count 3: Murder: 45 years

Count 4: Murder: 45 years

Count 5: Murder: 45 years

Count 6: Murder: 45 years

Count 7: Murder: 45 years

Count 8: Murder: 45 years

Count 9: Housebreaking with intent to rob and robbery, taken together with count 10: robbery with aggravating circumstances: 15 years

Count 11: defeating or obstructing the course of justice: 6 years

Count 12: Arson: 10 years

Count 14 (possession of firearm) and Count: 15 possession of ammunition, taken together: 4 years

Sentences to be served concurrently:

It is ordered that 30 (thirty) years imprisonment in respect of count 3 shall run concurrently with the sentence in respect of count 1. It is further ordered that the terms of imprisonment imposed in respect of counts 4-8 as well as the terms of imprisonment imposed in respect of counts 9 and 10 taken together; count 11; count 12, and counts 14 and 15 taken together, shall run concurrently with the sentence imposed in respect of count 2.

Accused 2 shall therefore serve an effective term of imprisonment of 105 years.

ACCUSED 3:

[26] It is not clear to me exactly at what stage you associated yourself with Accused 2 to commit the murders- but associated yourself you did. I am not prepared to jump to the conclusion that because you paid bail for Accused 2 you had from that point onward worked with Accused 2 to plan all the crimes- especially murder. I will therefore give you the benefit of the doubt when it comes to sentence and assume that you did so only while at the farm. That distinguishes your culpability from that of Accused 2 who had made up his mind to harm a member of the Erasmus family at a very early stage. I will therefore impose on you terms of imprisonment in respect of the murder counts that are less than those I meted out on accused 2.

I sentence you as follows:

Count 1: Murder: 30 years

Count 2: Murder: 30 years

Count 3: Murder: 30 years

Count 4: Murder: 30 years

Count 5: Murder: 30 years

Count 6: Murder: 30 years

Count 7: Murder: 30 years

Count 8: Murder: 30 years

Count 9: Housebreaking with intent to rob and robbery, taken together with count 10: robbery with aggravating circumstances: 15 years

Count 11: defeating or obstructing the course of justice: 6 years

Count 12: Arson: 10 years

Count 14: (possession of fire-arm) and Count: 15 (possession of ammunition) taken together: 4 years.

Sentences to be served concurrently:

It is ordered that six years imprisonment in respect of count 3 shall run concurrently with the sentence in respect of count 1. It is further ordered that the terms of imprisonment imposed in respect of counts 4-8 as well as the terms of imprisonment imposed in respect of counts 9 and 10 taken together; count 11; count 12, and counts 14 and 15 taken together, shall run concurrently with the sentence imposed in respect of count 2.

Accused 3 is therefore sentenced to an effective term of imprisonment of 84 years.

ACCUSED 1:

[27] I take into account the period that you have now served since I withdrew your bail after conviction. I also take into account all of the mitigating factors you testified about and which were made reference to by your counsel. You, as I said at the start of this judgment, acted with premeditation though. Although no proof was given by the State of the value of each and every item listed in the annexure to the theft count of the charges against you, it defies logic to argue that, for that reason, they have no value. Common sense suggests they do considering their number, the fact they remained in the use of the victims and the fact that the thieves saw value in them. I am satisfied that theft of items of considerable value was proved against you. The fact that the items constituting the theft include live stock is an especially aggravating factor. Although you may not represent a threat to society in the physical sense, your being party to planning the commission of theft makes you a danger to the rest of the community. A custodial sentence, although tempered with mercy, is therefore inescapable.

[28] I therefore sentence you as follows:

Count 13: Theft: 10 years imprisonment of which 4 years are suspended for (five) 5 years on condition that during the period of suspension you are not convicted of theft or stock theft committed during the period of suspension.

Count 14: possession of firearms: 4 years. The sentence of imprisonment on count 14 shall run concurrently with the sentence in respect of count 13.

[29] At request of the State I make the following orders in terms of the Criminal Procedure Act, 51 of 1977:

1. In terms of Section 34(1)(a):

- (a) Exhibits number 1 (blue trouser), 2 (T-Shirt), 6 (pair of black shoes), 7 (pair of yellow shoes) and 14 (driver's licence of accused 3) be returned to accused Gavin Beukes;
- (b) Exhibits number 3 (blue cap), 4 (khaki trouser with belt), 5 (khaki long sleeved jersey) and 28 (voter registration card of accused 2) be returned to accused Sylvester L Beukes;
- (c) Exhibits number 37 (new safe with door) and 39 (spent projectile used by NFSI be returned to the Director of the National Forensic Science Institute (NFSI), Windhoek.

2. In terms of Section 34(1)(b):

- (a) Exhibits number 8 (.250 rifle no. 180400), 9 (.22 rifle no. 16616), 10 (.38 special revolver no. 1066483), 11 (.22 revolver no. 101563), 12 (fire-arm licence book of the deceased in count 1), 13 (fire-arm licence book of the deceased in count 2), 15 (driver's licence of the deceased in count 2), 16-27 + 29 (maroon camera bag and its contents as per courts list of exhibits), 30 (one .38 special bullet), 31 (smaller maroon bag) and 38 (old damaged

rifle safe) be returned to the executor of the estate of the deceased in counts 1 and 2;

- (b) Exhibits 32 (wallet and N\$159.55) and 34 (white pocket knife) be returned to the family of the deceased in count 3.

3. In terms of Section 34(1)(c):

- (a) Exhibit 33 (one pouch of cannabis) is forfeited to the State.

4. In terms of Section 34(4):

- (a) The orders made in paragraphs 1, 2 and 3 hereof are suspended pending any appeal or review against the verdict of the Court.

DAMASEB, JP

ON BEHALF OF PLAINTIFF

MS VERHOEF

Instructed by: OFFICE OF THE PROSECUTOR GENERAL

ON BEHALF OF ACCUSED NO. 1

MR ISAACKS

Instructed by: LEGAL AID

ON BEHALF OF ACCUSED NO. 2

MR IPUMBU

Instructed by: LEGAL AID

ON BEHALF OF ACCUSED NO. 3

MR MBAEVA

Instructed by: LEGAL AID