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ALLEGATIONS OF WITCHCRAFT

A young woman in Windhoek was recently murdered, reportedly by a man who accused her of witchcraft. Last year, it was reported in the press that a woman in the Kunene Region was shackled and isolated in a hut for years because her family believed that she was a witch - when in fact she was actually suffering from dementia, which typically involves confusion and forgetfulness.

There are a surprising number of results if one searches Namibian cases for mentions of witchcraft.

Allegations of witchcraft are sometimes related to serious violence, including domestic violence. For instance, not long after independence, a man stabbed his girlfriend to death near Keetmanshoop, and then cut off her head. He stated in his defence that the deceased had caused the death of his two brothers by witchcraft, and that he thought his own life was similarly in danger, saying that he cut off her head so that she could not rise up again and bewitch him. This excuse notwithstanding, he was convicted of murder.¹

In 2016, a man was convicted of murder for killing a 62-year-old woman. He claimed that he beat the deceased because she was a witch who was bewitching him, his brother and his mother. The High Court found that this misguided belief was sincere, but did not attach much weight to it as a mitigating factor, mindful of the need “to deter others who contemplate killing innocent people whom they believe are bewitching them. We are living in a civilized society where the killing of people believed to be witches cannot be condoned.”²

In a 2013 divorce case, the wife alleged that her husband “continuously accused her of practising witchcraft and of trying to cause his death”.³

Allegations of witchcraft have also featured in a case involving rapes of multiple girls and women, where a man convinced some of them that they were the victims of witchcraft and then “treated” them with tactics that amounted to rape.⁴ Such allegations have also featured in labour law. In one case, a woman’s fellow employees complained that she was threatening them with witchcraft. She was temporarily suspended, but an internal investigation found the complaints to be baseless. However, when she resumed work, she applied to be transferred to another shift on the grounds that the incident had a negative impact on her work circumstances. The employer refused this request and she resigned. The district labour court

¹ *S v Mokeng* 1992 NR 220 (HC).

² *State v Alfred (CC11/2013)* [2016] NAHCNLD 15 (2 March 2016) (sentencing); *State v Alfred (CC11/2013)* [2016] NAHCNLD 11 (12 February 2016) (trial); *S v Alfred (CC 11 / 2013)* [2017] NAHCNLD 64 (06 July 2017) (application for leave to appeal sentence denied).

³ *H v H* (I 675-2011) [2013] NAHCMD 123 (7 May 2013).

⁴ *S v BM* 2013 (4) NR 967 (NLD).

found that the employer's actions amounted to constructive dismissal and awarded the employee five month's salary as compensation.⁵

One remedy for witchcraft allegations is the law of defamation. In 2017, a woman won N\$70 000 in damages for defamation from her step-father and her step-sister after they stated at a funeral, in the presence of many people, that she was a witch who uses witchcraft to kill people. In that case, the High Court stated that such allegations are clearly defamatory, noting that "in many African traditional societies, even in the 21st century, the belief in witchcraft remains as a fossil that continues to rear its ugly head from time to time and normally heralds grave consequences for one 'diagnosed' or 'smelt' out as a witchcraft practitioner".⁶

In 2019, a school principal was awarded damages of N\$70 000, after the defendant similarly stated at a funeral, and then again in text messages, that the principal was a witch who had caused the death. The High Court states in this case that belief in witchcraft "is still widespread in many African communities and brings about breakdown in relations in those communities be it amongst family members, neighbours or members of the community".⁷

In a somewhat different twist, in 2018, a traffic officer was awarded damages of N\$80 000 for defamation after an incident that ensued when he stopped a driver to issue her with a traffic ticket. She alleged that this traffic officer had called her a witch and then hit her with some car keys. She laid a criminal charge against him and suggested in the hearing of several others that he was the one who was bewitching her. The traffic officer claimed that her allegations preventing him from being considered for a promotion. In awarding him damages, the High Court stated that it was "injurious for him to be referred to as a witch".⁸

Namibia's Maintenance Act 9 of 2003 makes it illegal to try to discourage anyone from filing a maintenance complaint or laying a criminal charge for non-payment by threatening to harm the complainant in any way – including by means of witchcraft. This mindset unfortunately still exists and many women in some regions are still fearful when they apply for maintenance that the child in question might be bewitched. It does not matter if there actually is such a thing – it is a crime to use such a threat to intimidate someone from asserting their rights in respect of maintenance. The penalty is a fine of up to N\$20 000 or imprisonment for up to five years.

The colonial-era Witchcraft Suppression Proclamation 27 of 1933 lists a number of criminal offences relating to allegations of witchcraft. It is a crime to accuse another person of using "non-natural means" to cause disease or injury to a person or property, or to name or indicate another person as being a wizard or witch. It is also an offence to employ or solicit someone to name or indicate another person as a wizard or witch, or to prepare or administer any poisonous drink or substance in the guise of testing someone who has been accused of witchcraft.

It is, in addition, an offence to advise another person on how to bewitch or injure persons, animals or other property, to supply "the pretended means of witchcraft", or to directly take steps intended to injure a person or property based "on the advice of a witchdoctor" or "pretended knowledge of so-called witchcraft".

⁵ See *Swartz v Navachab Gold Mine* (LCA 19/2008) [2017] NALCMD 26 (27 July 2017).

⁶ *Mbura v Katjiri* (I 4382/2013) [2017] NAHCMD 103 (31 March 2017).

⁷ *Amukete v Iiyagaya* (HC-NLD-CIV-ACT-DEL-2019/00047) [2019] NAHCNLD 103 (30 September 2019).

⁸ *Kashululu v Nakale* (I 132/2015) [2018] NAHCNLD 44 (14 May 2018).

There is also an offence aimed at preventing exploitation of others' belief in witchcraft. It is a crime to pretend to use witchcraft, tell fortunes or find lost or stolen items by means of "occult science" for purposes of gain.

The punishment for these crimes is an unspecified fine or imprisonment for up to five years, or both.

Neither of these laws appears to be used in practice, although the case law indicates that accusations of witchcraft are still levelled at people in practice and sometimes used as excuses for violent crimes. Although defamation has been successfully used as a remedy in some instances, a civil claim in the High Court is out of reach for most Namibians.

The Witchcraft Suppression Proclamation should be revised or replaced with a more modern law which addresses false allegations of witchcraft and exploitation of people in the guise of witchcraft – while clearly distinguishing legitimate traditional healing practices from malicious allegations which can be used to try to control others, particularly women. And the public needs to be reminded that no such claim is a justification for violence.

This column was produced with support from the Hanns Seidel Foundation.