



**IN THE HIGH COURT OF SOUTH AFRICA,  
FREE STATE DIVISION, BLOEMFONTEIN**

|                              |        |
|------------------------------|--------|
| Reportable:                  | YES/NO |
| Of Interest to other Judges: | YES/NO |
| Circulate to Magistrates:    | YES/NO |

Review No.: R350/2018

In the review of:-

**THE STATE**

and

**CHARLES MAKWENDA**

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**CORAM:** MUSI, AJP

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**JUDGMENT BY:** MUSI, AJP

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**DELIVERED ON:** 24 December 2018

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- [1] This matter was sent on special review by the control magistrate, Bloemfontein.
- [2] The accused was purportedly convicted of contravening section 49(1)(a) of Act 13 of 2002 – entering or remaining in the Republic of South Africa without valid documents.
- [3] He pleaded guilty but was not convicted by the magistrate. The magistrate purported to act in terms of section 112(1)(a) of the Criminal Procedure Act, 51 of 1997<sup>1</sup>.

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<sup>1</sup> Section 112(1)(a) reads as follows:

“The presiding judge may, if he is of the opinion that the offence does not merit the sentence of death, or the presiding judge, regional magistrate or magistrate may, if he is of the opinion that the offence does not merit punishment of imprisonment or any other form of detention without the option of a fine or of a whipping or of a fine exceeding the amount determined by the Minister from time to time by notice in the *Gazette*, convict the accused in respect of the offence to which he has pleaded guilty on his plea of guilty only and-

- [4] Sentencing can only be preceded by a guilty verdict. In this case there was no verdict and the accused was not informed that he is being guilty.
- [5] I agree with the control magistrate that the proceedings were not in accordance with justice. There being no conviction the sentence ought to be set aside.
- [6] Since the magistrate has indicated on the J15 that the accused is guilty but not on the transcribed proceedings, the chances are that the conviction and sentence are recorded against the accused's name.
- [7] The safest route to follow is to set aside the purported conviction as well. It will also obviate confusion at the criminal record centre.
- [8] I accordingly make the following order.  
The conviction and sentence are set aside.

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**C. J. MUSI, J**

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(i) impose any competent sentence, other than the sentence of death or imprisonment or any other form of detention without the option of a fine or a whipping or a fine exceeding the amount determined by the Minister from time to time by notice in the *Gazette*; or  
(ii) deal with the accused otherwise in accordance with law;"