

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

Review Number : 96/2015

In the review of:

THE STATE

and

RUI VINCENTE COSSA

CORAM: NAIDOO, J et WILLIAMS, AJ

JUDGMENT BY: WILLIAMS, AJ

DELIVERED ON: 25 JUNE 2015

[1] This is a special review under section 304(4) of Act 51 of 1977.

[2] The accused was charged with contravening section 49(1)(a) of Act 13 of 2002- Illegal Foreigner, in the magistrate's court,

Welkom. The accused was represented by Me Seati who confirmed the plea of guilty by the accused in terms of section 112(2) of the Criminal Procedure Act. After his written statement in terms of the Act had been read into the record, the learned magistrate found the accused guilty as charged.

[3] The accused was thereupon sentenced to a fine of R1 000,00 or three months' imprisonment. In terms of section 103(2) of Act 60 of 2000, the accused was furthermore declared unfit to possess a firearm. In this regard the clerk of the court has also informed the registrar of the Firearms Registry Centre of the magistrate's order declaring the accused unfit to possess a firearm.

[4] The provisions of section 103 of the Firearms Control Act, 60 of 2000 are, however, not applicable in this instance. Section 103(1)(a) – 103(1)(o) as well as section 103(2) with reference to schedule 2 does not warrant an enquiry into the competency of a person to possess a firearm. This part of the order is therefore ultra vires.

[5] I therefore propose that the following order be made:

The sentence of the court a quo is amended to read as follows:

1. The accused is sentenced to a fine of R1 000,00 or three months' imprisonment.

A. WILLIAMS, AJ

I agree:

S. NAIDOO, J