

IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION: BLOEMFONTEIN

Review No: 228/2013

In the special review matter between:

THE STATE

And

LETSOENYEHO MOKHALI

CORAM: VAN ZYL, J *et* MOENG, AJ

JUDGMENT: MOENG, AJ

DELIVERED ON: 18 DECEMBER 2014

- [1] This matter was placed before me on special review in terms of section 304 (4) of the Criminal Procedure Act 51 of 1977('CPA'). The accused was charged with contravention of section 49(1) of the Immigration Act 13 of 2002. The state alleged that the accused, on 16 November 2014, unlawfully entered or remained in the Republic of South Africa. The accused pleaded guilty to the charge before the magistrate Bloemfontein and was, in terms of section 112(1) (a) of the CPA, convicted and sentenced to a fine of R1000.00 or 45 days imprisonment.

- [2] Immediately after the imposition of sentence, the accused brought it under the attention of the presiding magistrate that he was in possession of a valid passport. A copy thereof was attached to the record of the proceedings. The presiding magistrate expresses the view that the conviction and sentence are therefore not in order and requests that the entire proceedings be set aside.
- [3] In terms of section 49 (1) (a) of the Immigration Act, ‘ *Anyone who enters or remains in, or departs from the Republic in contravention of this Act, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding two years*’. Section 9 (4) (a) and (b) of the Act in turn provides that a foreigner who is not the holder of a permanent residence permit contemplated in section 25 may only enter the Republic as contemplated in the section if his or her passport is valid for a prescribed period and is issued with a valid visa, as set out in the Act.
- [4] It appears *ex facie* the copy of the passport that was at the disposal of the magistrate and attached to the record, that the accused is a citizen of the Kingdom of Lesotho. His passport was issued on 6 February 2012 and is set to expire on 5 February 2022. The accused entered the Republic of South Africa on 26 October 2014 through the Van Rooyen’s Boarder Gate and was allowed to remain the Republic until 25 November 2014. It is common cause that the accused was convicted of having unlawfully entered or remained in the Republic on

16 November 2014. His passport was valid and his stay in the Republic was therefore lawful when he was convicted and sentenced.

[5] The following order is accordingly made;

1. The conviction and sentence are set aside.

L.B.J. MOENG, AJ

I concur

C. VAN ZYL, J