

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review No.: 62/2013

In the matter between:

THE STATE

and

MIEKIE ADAMS

Review No.: 63/2013

In the matter between:

THE STATE

and

KATRINA MADITABA MOLEJANE

CORAM: LEKALE, J *et* MHLAMBI, AJ

JUDGMENT BY: LEKALE, J

DELIVERED ON: 4 APRIL 2013

- [1] The two matters serve before us on special review in terms of section 304(4) of the Criminal Procedure Act, no 51 of 1977 (the “CPA”).

- [2] In both matters the trial Magistrate convicted and sentenced the accused under Child Care Act, No 74 of 1983 (The CCA) on the 14th June 2012 and the 21 June 2012 respectively.
- [3] The offence in each case was committed after the 1st April 2010 viz. the date on which the Children's Act, No 38 of 2005 (The CA) came into operation and effectively repealed the CCA. The offence in the first case was committed during 2011 while the crime in the second case was committed during 2012.
- [4] The above discrepancies caught the vigilant eye of the Senior Magistrate who, thereupon, took the two matters on special review requesting the reviewing Judge to, *inter alia*:

**“(a) set aside the convictions and sentences;
(b) order the cases to start de novo.”**

- [5] We are in respectful agreement with the learned Senior Magistrate that the convictions and sentences in the two matters fall to be set aside because, in the absence of any legislative transitional provision to the contrary, a repealed law is no law at all for the purposes of legal posterity. It can, as such, not sustain a conviction in so far as, in law, there can be no crime without a law. It can, further, not justify punishment because there can be no punishment without a law. These principles, expressed in the maxims *nullum crimen sine lege*

and *nulla poena sine lege*, are reflections of the principle of legality in our criminal justice system. (See **Director of Public Prosecutions, Western Cape v Prins and Others** 2012 (2) SACR 183 (SCA) at para [8])

- [6] The CA contains no such provisions which preserve, for future conduct, those sections of the CCA in terms of which the accused in each case was charged and convicted. The charges should, thus, have been framed under the CA, as the law applicable on the dates when the offences were committed.

ORDER:

- [7] **Ad case no 62/2013:**

- (a) The conviction and sentence are set aside;
- (b) The matter is remitted to the Magistrate's Court for a fresh trial before another trial Magistrate.

- [8] **Ad case no 63/2013:**

- (a) The conviction and sentence are set aside;
- (b) The matter is remitted to the Magistrate's Court for a trial *de novo* before another trial Magistrate.

L. J. LEKALE, J

I concur.

J.J. MHLAMBU, AJ

/EB