

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review No. : 189/2012

In the matter between:-

THE STATE

and

TEKE RAMAKEWANA

CORAM:

HANCKE, AJP *et* DAFFUE, J

JUDGMENT BY:

DAFFUE, J

DELIVERED ON:

18 OCTOBER 2012

[1] This is a special review in accordance with the provisions of section 304(4) of the Criminal Procedure Act, 51 of 1977 ("the Act").

[2] The accused was charged with and convicted of contravening section 49(1) of the Immigration Act, 13 of 2002 in that he entered and/or remained illegally in the Republic of South Africa. The accused was represented by a legal representative who prepared a statement in terms of section 112(2) of the Act for and on his behalf. Having

been satisfied with the contents of the statement and that all necessary admissions had been made, the court *a quo* convicted the accused on 24 April 2012 and sentenced him the same day to payment of a fine of R2000,00 or 6 months' imprisonment, wholly suspended for three years on certain conditions.

[3] After imposition of sentence the court *a quo*'s attention was drawn to the fact that the imposed sentence was not in accordance with justice and the matter was consequently sent to the High Court on special review.

[4] The applicable subsection of the Immigration Act is subsection 49(1)(a) which reads as follows:

“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 imprisonment not exceeding three months.” (emphasis added)

The imposed sentence is not in accordance with justice and should be reviewed and set aside.

[5] The particular offence is prevalent, not only in the Bloemfontein district, but across the country. Illegal immigrants have a serious impact on the country in its economic and socio-economic spheres. A vast number of illegal immigrants appear frequently in our courts on serious charges such as murder and robbery.

[6] In reconsidering sentence afresh there is no reason to interfere with the imposed fine. Bearing in mind the prevalence of the offence and the consequences on our community, three months' imprisonment as an alternative to payment of a fine is justified. However the sentence must be wholly suspended to prevent the imposition of a more severe sentence than the one already imposed.

[7] Consequently the following orders are made:

1. The sentence imposed is reviewed, set aside and substituted with the following:

Payment of a fine in the amount of R2 000,00 or 3 (three) months' imprisonment, which is wholly suspended for three years on condition that the accused is not convicted of contravening section 49(1)(a) of the Immigration Act, 13 of 2002 by illegally entering and/or remaining in the Republic of South Africa committed during the period of suspension.

2. The sentence is antedated to 24 April 2012.

J. P. DAFFUE, J

I concur.

S. P. B. HANCKE, AJP