

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review No. : 73/2011

In the special review between:-

THE STATE

and

<u>CANIUS TOFANA</u>	Accused 2
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<u>MICHAEL NKAMANE</u>	Accused 3
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<u>ISAAC MLAMBO</u>	Accused 4
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<u>CORAM:</u>	EBRAHIM, J <i>et</i> LEKALE, AJ
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<u>JUDGMENT BY:</u>	EBRAHIM, J
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<u>DELIVERED ON:</u>	3 MARCH 2011
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[1] This matter was placed before us on special review in terms of subsection 304 of the Criminal Procedure Act, 51 of 1977, as amended, with the following comments from the learned magistrate:

“Please find attached abovementioned case to be presented to the Honourable judge in charge of Review cases for special review for the following reasons.

On 17 January 2011, 4 accused persons appeared before me.

Count 1 was put against all 4 accused whilst count 2 was put only in respect of accused 2, 3 and 4. They pleaded guilty accordingly and they were convicted.

Accused 2, 3 and 4 on count 2 were sentenced to a Fine of R1500 or 6 months imprisonment which were suspended for 3 years on condition that they not be convicted of c/s 49 of the Immigration act, 13 of 2002.

However by imposing this sentence, the sentence jurisdiction was exceeded as section 49(1)(a) of Act 13 of 2002 allows a minimum sentence of a fine or 3 months imprisonment.

I respectfully submit that in respect of accused 2, 3 and 4 on count, 2 the sentence be altered to the following:

‘Fined R1000 or 3 months imprisonment suspended in whole for a period of 3 years on condition the accused not be convicted of contravening section 49 of Act 13 of 2002, committed during the period of suspension.’”

[2] Having perused the record of the proceedings, we are satisfied that an irregularity in sentencing has occurred such that the proceedings cannot be said to have been in accordance with justice.

[3] The sentence in respect of accused 2, 3 and 4 on Count 2 is accordingly set aside. In its place, a sentence of a fine of

R1000,00 or three (3) months imprisonment suspended in whole for a period of 3 years on condition the accused not be convicted of contravening section 49 of Act 13 of 2002, committed during the period of suspension.

S. EBRAHIM, J

I concur.

L.J. LEKALE, AJ

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