

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Review Number. : 492/2010

In review between:-

THE STATE

and

SAKIA MOIKETSI

Case No. 511/2010

RETHABILE RALIILE

Case No. 510/2010

CORAM:

MOLOI, J

JUDGMENT BY:

MOLOI, J

DELIVERED ON:

07 OCTOBER 2010

JUDGMENT

MOLOI, J

[1] This is a special review forwarded to me by the Magistrate, Clocolan.

[2] The two accused, both citizens of Lesotho appeared separately before the magistrate, Clocolan on charges of contravening

section 49(1) r/w section 1, 10, 25 and 26 of the Immigration Act No. 13 of 2002 in that they unlawfully entered the Republic of South Africa without valid passports or documents authorising them to do so. They pleaded guilty and the proceedings were finalised in terms of section 112 (1) (a) of the Criminal Procedure Act 51 of 1977. The Magistrate, however, imposed a sentence of Twenty (20) days imprisonment in respect of each accused.

- [3] The proceedings under section 112 (1) (a) of the Act, however, require that the magistrate may only;

“(1) Impose any competent sentence, other than imprisonment or any other form of detention without the option of a fine or a fine exceeding the amount determined by the Minister from time to time by notice in the Gazette...”

- [4] Clearly the sentence of Twenty (20) days imprisonment is not in accordance with the law bearing in mind the provisions of section 112 (1) (a) of the Criminal Procedure Act, 51 of 1977. As a consequence, I make the following orders:

- 4.1 In both cases the convictions are confirmed.
- 4.2 The sentence of Twenty (20) days imprisonment in each case is set aside.
- 4.3 The sentence of Twenty Rand (R20.00) or Twenty (20) days imprisonment is substituted for the sentence in 4.2 above in both cases;
- 4.4 The sentence in 4.3 above is predated to 23 September 2010;
- 4.5 The order must be faxed through to the correctional services facility where the accused are held forthwith and to the magistrate, Clocolan, to make the necessary arrangements for their release when due.

MOLOI, J