



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Review Case No: 79/2026

In the matter between:

THE STATE

Applicant

and

ISSA JOHN

Accused No 1

HAMADI RASHIDI

Accused No 3

SULEIMANI HASSAN

Accused No 4

MAULIDI MANANDA MHUHOADA

Accused No 5

INNOCENT FELIC

Accused No 6

Reportable / Not reportable

Coram: Wille J and Anderssen AJ

Heard: 17 March 2026

Delivered: Electronically on 18 March 2026

Summary: Review – s 302 Criminal Procedure Act – sentences corrected

ORDER

Accused No 1 (Issa John)

1. The conviction is confirmed.
2. The sentence is set aside and substituted with the following:

“Accused No 1 is sentenced to ninety (90) days imprisonment antedated to 24 February 2026.”

3. Accused No 1 shall be deported from the Republic of South Africa after he has served his sentence.

Accused No 3 (Hamadi Rashidi)

4. The conviction is confirmed.
5. The sentence is set aside and substituted with the following:

“Accused No 3 is sentenced to a fine of R1 000 (one thousand rand) or thirty (30) days imprisonment wholly suspended for three (3) years on condition that the accused is not convicted of an offence under section 49(1)(a) or (b) and/or section 49(14) of Act 13 of 2002 during the period of the suspension.”

6. The imposition of the suspended sentence shall be antedated to 24 February 2026.
7. Accused No 3 shall be deported from the Republic of South Africa.

Accused No 4 (Suleimani Hassan)

8. The conviction is confirmed.

9. The sentence is set aside and substituted with the following:

“Accused No 4 is sentenced to a fine of R1 000 (one thousand rand) or thirty (30) days imprisonment wholly suspended for three (3) years on condition that the accused is not convicted of an offence under section 49(1)(a) or (b) and/or section 49(14) of Act 13 of 2002 during the period of the suspension.”

10. The imposition of the suspended sentence shall be antedated to 24 February 2026.

11. Accused No 4 shall be deported from the Republic of South Africa.

Accused No 5 (Maulidi Mananda Mhuoada)

12. The conviction is confirmed.

13. The sentence is set aside and substituted with the following:

“Accused No 5 is sentenced to a fine of R1 000 (one thousand rand) or thirty (30) days imprisonment wholly suspended for three (3) years on condition that the accused is not convicted of an offence under section 49(1)(a) or (b) and/or section 49(14) of Act 13 of 2002 during the period of the suspension.”

14. The imposition of the suspended sentence shall be antedated to 24 February 2026.

15. Accused No 5 shall be deported from the Republic of South Africa.

Accused No 6 (Innocent Felic)

16. The conviction is confirmed.

17. The sentence is set aside and substituted with the following:

**“Accused No 6 is sentenced to ninety (90) days imprisonment
antedated to 24 February 2026.”**

18. Accused No 6 shall be deported from the Republic of South Africa after he has served his sentence.

REASONS

Anderssen AJ:

[1] This matter came before the court on review in terms of section 302 of the Criminal Procedure Act. Section 302(1) reads as follows:

302. Sentences subject to review in the ordinary course

(1) (a) Any sentence imposed by a magistrate’s court—

(i) which, in the case of imprisonment (including detention in a child and youth care centre providing a programme contemplated in section 191(2)(j) of the Children’s Act, 2005 (Act 32 of 2005)), exceeds a period of three months, if imposed by a judicial officer who has not held the substantive rank of magistrate or higher for a period of seven years, or which exceeds a period of six months, if imposed by a judicial officer who has held the substantive rank of magistrate or higher for a period of seven years or longer;

(ii) which, in the case of a fine, exceeds the amount determined by the Minister from time to time by notice in the Gazette for the respective judicial officers referred to in subparagraph;

shall be subject in the ordinary course to review by a judge of the provincial or local division having jurisdiction.

- [2] The magistrate who imposed the sentences was appointed as magistrate on 1 February 2020 and has thus held the rank of magistrate for a period of less than seven years.
- [3] Accused No 1 and No 6 were sentenced to twelve months' direct imprisonment and Accused No 3, No 4 and No 5 were sentenced to R3 000 (three thousand rand) or ninety days direct imprisonment on convictions on the charge of contravening section 49(1)(a) of Act 13/2002 (anyone who enters or remains in, or departs from the Republic in contravention of the Immigration Act, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding two years).
- [4] It appears from the record of proceedings that the accused first appeared in magistrates' court on 8 December 2025 and that all of them were in custody. On 19 December 2025 their application for bail was denied. The record shows subsequent appearances on 30 December 2025, 6 January 2026, 7 January 2026, and 9 January 2026. A renewed bail application on the latter date was also denied. On 30 January 2026 the charges were put to the five accused and they pleaded guilty. On this date the accused were represented and pleas in terms of section 112(2) of the Criminal Proceeding Act were handed in and accepted as exhibits. The matter was postponed for sentencing and eventually came before the magistrate again on 10 February 2026.
- [5] The typed record reflects that the following mitigating factors were put on record by the accused's representative:

No 1: Is not married, 33, 5& 1½, Standard 12, Unemployed.

No 3: Is 29 years, has 2 children 4 & 1. Standard was a Barba.

No 4: He is 29 years old, has a girlfriend. 1 year. He sell fruit.

No 5: Has girlfriend, 2 kids 7 & 4, Grade 7 is a painter, never found guilty.

No 6: Is 32 years. Has girlfriend. She works in a Somalia shop.

Generally: They pleaded guilty was avoided long trial, guilty is a strong mitigating factor, no violence, Fraud, they are still young has tie (sic) for rehabilitation. Some has previous convictions.

They are willing to self-deport. Will take one-way flight, he can come legally to take the children.

S v Baja 2001, Court to propose proportion on Sentence.

They families request a wholly suspended Sentence.

[6] As regards the address from the prosecutor the typed record reflects:

The Courts hands is tide, they have victimize residence of this Country. Where is the law. They all have previous convictions, they kept children in the Country. They commit these was a another xxx. The Court must impose Sentences. They are foreign, the Home Affairs, we don't know it. The Police have the Home Affairs may not deport them.

[7] Sentence was handed down on 24 February 2026 and it appears from the typed record that the magistrate gave the following reasons:

The Court has considered the submissions made by the Defence on a suspended sentence and a self deportation order where they will pay for own expenses to travel back to their Country of origin (Tanzania). This was a Noble submission from defence, which lacks actual retributive elements. The State argued against this suggestion and asked the Court to impose an appropriate sentence that will deter accused from committing similar offence again.

The Court is convinced with the proposal made in a White paper by the Minister of Home Affairs. Hori: Groenewald which is in line with suggestion made by Defence. However, this has not gone all the ways through the legislative process.

Imposing an appropriate sentence is no easy task, the Court must consider the triad of Zinn and balance all these factors in terms of the Holder and Malgas cases.

Accused No 1: John Issa has committed for offence in Richards Bay 2019/03/21, Mayville (KZN) 19/09/2020 five months later, again on 17/09/2021 Point.

Accused No 3: Hamadie Rashidi Robbery 27/09/2024 Cape Town

Accused No 4: Suleimani Hassan Robbery 10/03/2020 Cape Town

Accused No 5: Maulidi Mananda (Mhuhuada) Theft 06/07/2013 Cape Town

*Accused No 6: Innocent Felia Immigration 09/08/2016 Maydon Wharf,
Immigration 07/03/2018 Durban, Immigration 27/06/2018 Maydon Wharf,
Contravening Section 1(1)(a) 18/03/2019 Cape Town*

[8] The SAPS69c criminal records reflect that:

[8.1] Accused No 1 was sentenced as follows in respect of his previous convictions of contravening section 49 of the Immigration Act: (a) R800 fine or 40 days imprisonment, (b) R1 500 fine or 30 days imprisonment, (c) R2 500 or 6 months imprisonment wholly suspended for five years on the condition that he not be convicted on a similar offence during the period of suspension (which began on 2021-10-12).

[8.2] Accused No 6 was sentenced as follows in respect of his previous convictions of contravening section 49 of the Immigration Act: (a) cautioned and discharged, (b) 15 days imprisonment, and (c) 30 days imprisonment.

[9] The sentences imposed demonstrate the highly variable nature of the sentences and the discretion afforded to the court. It also demonstrates progression in the sentencing in accordance with the Zinn triad – a foundational South African sentencing principle from *S v Zinn* (1969) requiring courts to balance three elements: the crime, the offender, and the interests of society. It ensures proportional, individualized sentencing by weighing the offense's severity, the offender's circumstances, and public interest.

[10] Unfortunately, the sentences handed down by the magistrate in the matter under review, do not accord with the Zinn triad. 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. The severity of the offence is limited when regard is had to factors such as violence, premeditation, and cruelty. The magistrate has paid very little attention to the personal circumstances of the offenders in respect of their age, remorse, previous convictions, and personal background. These circumstances were not even mentioned in his judgment, which ignored *inter alia* the fact that three of the accused had young children. No note was made on the record as to the circumstances of the children's mothers and to what extent the accused are providing for them financially. There is no indication on the record as to whether the children are living in South Africa or elsewhere. It appears from the magistrates' reasons that he has over-emphasised the third factor, which addresses the need for protection, deterrence (preventing future crimes), rehabilitation, and retribution (social outrage).

[11] Section 49(1)(a) provides for a fine or imprisonment not exceeding two years. Imposing a R3 000 fine or 90 days' imprisonment for a first offence is excessive, particularly when compared to the sentences for Accused No 1 and Accused No 6 in respect of their first offences. The record reflects that the only amount of money that the family members of the accused could scrape together for bail was R500 each. The accused would not be able to pay a R3 000 fine and would inevitable be imprisoned for 90 days. In addition, by the time sentence was handed down, they had already been incarcerated for about 77 days (between at least 8 December 2025

and 24 February 2026) without bail. The sentences should be corrected and reduced to R1 000 or 30 days wholly suspended for a period of three years provided that the accused are not convicted for the same, or a similar, offence during the period of suspension.

[12] As regards Accused No 1 and Accused No 6, they stand convicted for the fourth time on the same offence. Previous, shorter periods of imprisonment had not deterred them from committing the same offence. Direct imprisonment, without the option of a fine, is appropriate but not for a period of twelve months. In each of their cases the sentences are corrected to 90 days' imprisonment.

[13] The order is reflected above.

ANDERSSEN J S
Acting Judge of the High Court

I agree and it is so ordered.

WILLE D
Judge of the High Court