



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

REPORTABLE

In the matters of:

THE STATE v IBRAHIM HASHIM (KINYO)	Case No: 92/2025
THE STATE v PRINCE MBANZA	Case No: 30/2026
THE STATE v MUNA MKWANA	Case No: 97/2025
THE STATE v FRANCIS SAMBA	Case No: 89/2025
THE STATE v GIE KOME (ZINGA ALBERTO)	Case No: 29/2026
THE STATE v TAJUL ISLAM	Case No: 176/2026
LEGAL AID BOARD SOUTH AFRICA	First Intervening Party
THE MINISTER OF HOME AFFAIRS	Second Intervening Party
THE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT	Third Intervening Party
THE MINISTER OF CORRECTIONAL SERVICES	Fourth Intervening Party
THE SCALABRINI CENTRE	Amicus Curiae

Coram: Henney J, Slingers J et Kantor AJ

Heard: 28 August 2026

Judgment: 2 September 2026

Summary: On convicting an accused of contravening section 49(1)(a) of the Immigration Act 13 of 2002, a magistrates' court does not have the power to make an order for the deportation of that accused.

ORDER

It is ordered as follows:

1. In **THE STATE v IBRAHIM HASHIM (KINYO), Case No: 92/2025:**
 - 1.1 The deportation order made is set aside.
 - 1.2 The convictions and sentences are otherwise confirmed.
2. In **THE STATE v PRINCE MBANZA, Case No: 30/2026:**
 - 2.1 The deportation order made is set aside.
 - 2.2 The convictions and sentences are otherwise confirmed.
3. In **THE STATE v MUNA MKWANA, Case No: 97/2025:**
 - 3.1 The deportation order made is set aside.
 - 3.2 The convictions and sentences are otherwise confirmed.
4. In **THE STATE v FRANCIS SAMBA, Case No: 89/2025:**
 - 4.1 The deportation order made is set aside.
 - 4.2 The order that *"The accused must also be further detained for the purposes of deportation in terms of section 34(1), (5) and (8) – Act 13/2002."* is set aside.
 - 4.3 The convictions and sentences are otherwise confirmed.
5. In **THE STATE v GIE KOME (ZINGA ALBERTO), Case No: 29/2026:**
 - 5.1 The deportation order made is set aside.
 - 5.2 The convictions and sentences are otherwise confirmed.
6. In **THE STATE v TAJUL ISLAM, Case No: 176/2026:**

6.1 The conditions to the sentence are set aside and reformulated, with the sentence to read as follows:

“The accused is sentenced to twelve (12) months imprisonment, wholly suspended for a period of three (3) years on condition that:

1. The accused is not convicted of contravening section 49(1)(a) of the Immigration Act 13 of 2002 which is committed 30 days after the date of this order and during the period of suspension.
2. Within 30 days of this order, the accused shall report to the nearest office of the Department of Home Affairs (and he shall retain written proof of having done so), in order for his presence in South Africa to be dealt with in accordance with the law.

6.2 The convictions and sentences are otherwise confirmed.

JUDGMENT

Handed down by email on 2 September 2026

Judgment handed down electronically by circulation to the legal representatives of the Intervening Parties and the Amicus Curiae by email and released to SAFLII.

KANTOR, AJ:

1. The above six matters are reviews in terms of the provisions of section 304(4) of the Criminal Procedure Act 51 of 1977 (“the CPA”). They were referred to this full bench by the Judge President in terms of section 302 of the CPA. The reason for this referral is for consideration by a full bench of the legal question as to whether a magistrates’ court has the power, and/or is obliged, to make an order for the deportation of a person upon convicting that person of contravening section 49(1)(a) of the Immigration Act 13 of 2002 (“the Act”).
2. Magistrates have been handing down orders to this effect on a routine basis, following, primarily, the decision of Luis Alberto Cuna v S (Sentence Appeal)

(A6/2020) [2020] ZAGPPHC 790 (15 December 2020) ('Cuna') in which it was held that a magistrates' court not only has the power, but is obliged (*'must'*), to make a deportation order on convicting an accused of contravening section 49(1)(a) of the Act. The papers in the six matters before this court revealed that Magistrates have a template format of an order in this regard which cites Cuna. There is a stand-out exception, being case number 176/2026, in which the Magistrate declined to order deportation, a decision which was supported by well-articulated and cogent reasons which were of assistance to this court.

3. The presiding Judge in this matter, Henney J, requested the Intervening Parties to make submissions. They did so in writing and in an oral hearing. This was of considerable assistance to the court which extends its appreciation to those parties and their legal representatives.
4. Section 49 of the Act creates criminal offences relating to the unlawful entry into, presence in or departure from the Republic, and prescribes penalties on conviction. It empowers a criminal court to determine guilt and, if necessary, to impose sentence.
5. Provisions of the Act core to this matter:
 - 5.1. Section 49 concerns criminal offences, as mentioned. It contains no express provision authorising a criminal court to order deportation as part of sentence.
 - 5.2. Deportation is regulated separately, under sections 32 and 34.
 - 5.3. Section 32(1) provides that an illegal foreigner shall depart the Republic unless authorised by the Director-General to remain "... *pending his or her application for a status.*"

- 5.4. Section 32(2) provides that “*Any illegal foreigner shall be deported.*”
- 5.5. Section 34 empowers immigration officers to arrest an illegal foreigner, detain that person pending deportation, and deport or cause that person to be deported.
6. The statutory scheme therefore draws a clear distinction between criminal liability under section 49 and deportation under sections 32 and 34.
7. The main question to be determined in this matter is whether a magistrates’ court has the power to order deportation following conviction or to make an ancillary order thereto.
8. This Court has not previously considered the question directly or decided it in terms and with reasons, but other divisions have:
 - 8.1. In Cuna (a decision of two judges on review) it was held that a magistrates’ court not only has the power, but is obliged, to make a deportation order on convicting someone of contravening section 49(1)(a) of the Act
 - 8.2. This was followed as binding authority in, for example, Maphosa v S (A198/2020) [2021] ZAGPPHC 84 (1 March 2021) at paragraphs 28 and 29 and S v Lucas (CC72/2019) [2022] ZAGPPHC 346 (13 May 2022) at paragraphs 62 and 63.
 - 8.3. In S v John and Others (Review) (79/2026) [2026] ZAWCHC 131 (18 March 2026), a review before two Judges of this division, the court did not interfere with a deportation order made by a Magistrate. The court, however, was concerned with other aspects of the sentence in question and its attention and emphasis did not appear to have been drawn to the

deportation issue. It is evident from the reading of its judgment that the court did not engage with the issue of a magistrates' court's jurisdiction to order deportation.

8.4. In S v Chivabo (HC 14/2024) [2024] ZANWHC 156 (27 June 2024) at paragraphs 8 to 12, a review before two Judges, reference was made to Cuna. The Court set aside the proceedings of the magistrates' court but not on the basis of Cuna being wrong. It did so for other irregularities in the proceedings.

8.5. Cuna has been questioned, but not dissented from, in Mba v Magistrate Simlah, Somerset West [2026] ZAWCHC 196 (30 April 2026) at paragraph 57 of which this court observed *obiter* that Cuna may have been wrongly decided but expressly noted that its correctness was not decided for the purposes of the urgent application before him.

8.6. Prior to Cuna, in Rugave v S (Review) (12 October 2016) (151/2016; DL117/2015) [2016] ZALMPPHC 18 (12 October 2016) a court of two judges reviewed and set aside an order by the magistrates' court in terms whereof the court, consequent to a conviction in terms of section 49(1)(a) of the Act, further ordered the deportation of the accused. Although very brief, the reasoning was to the effect that the Act did not clothe the magistrate with the power to order a deportation.

9. The reasoning of the court in Cuna is contained in paragraph 3.1 of the judgment. Due to its importance in this matter, relevant portions of the judgment will be quoted relatively extensively:

"3.1 **Illegal foreigner charge**

3.1.1 At the time of sentencing, the Trial Court was aware that the appellant, who as a result of his first illegal conviction, was deportable but was not deported.

3.1.2 Section 32 of the Immigration Act reads as follows:

“32. Illegal foreigner

(1) Any illegal foreigner shall **depart** (own emphasis), unless authorised by the Director-General in the prescribed manner to remain in the Republic pending his or her application for status.

(2) Any illegal foreigner **shall** (own emphasis) be deported.”

3.1.3 “Deport or deportation” means the action or procedure aimed at causing an illegal foreigner to leave the Republic in terms of the Immigration Act.

3.1.4 In terms of the Immigration Act it is the Immigration Officer who is empowered to enforce the process of detention and the deportation of an illegal foreigner. From the wording of Section 34 of the Immigration Act the enforcement of the process of deportation includes physically detaining of the illegal foreigner. It is therefore inconceivable that deportation can take place without the physical detaining of an illegal foreigner’s person. This Appeal Court says this by virtue of the fact that, as part of the deportation process, an illegal foreigner needs to be identified by the embassy/High commission of the country of origin of the illegal foreigner. The only manner in which this can take place, is by physically taking the illegal foreigner to the embassy/High commission concerned. It is unrealistic to assume that such a person, if released, will, by and on his own volition, report to an embassy/High commission for purposes of identification and it is also even more unlikely that such a person is going to report to the Department’s deportation holding facility, for purposes of deportation upon being requested to do so. The Department of Home Affairs (“*the Department*”) (responsible for the deportation of illegal foreigners) has in all likelihood faced countless instances where illegal foreigners who have been released after an initial detention period, simply fail to report as and when required, for purposes of effecting or finalising the deportation of the individual concerned. Let alone an illegal foreigner like the appellant who is simply released after serving a sentence for contravening the provisions of the Immigration Act.

...

3.1.13 The Trial Court having accepted, at the time, that other material factors, *supra*, where to be considered unfortunately failed to consider them and apply any weight thereto in exercising its discretion, and failed, as well, to make an order for the deportation of the Appellant ...

3.1.16 The Immigration Act provides that a person who has contravened Section 49(1) thereof shall, on conviction, be liable to a fine or to imprisonment not exceeding two years. It is our view that, once an accused has been found guilty in terms of Section 49(1) and sentenced either to a fine or imprisonment, the trial court must in addition make an order for her or his deportation.

3.1.17 The order so made, where the sentence of imprisonment has been imposed, can be that he or she be deported after serving the sentence or he or she be deported in terms of section 34(6) of the Immigration Act. Section 34(6) provides that any illegal foreigner convicted and sentenced under this Act may be deported before the expiration of his or her sentence and his or her sentence shall terminate at that time.”

...

- 3.1.21 The judiciary is required to impose sentences dictated by facts of each case. This Appeal Court is in agreement that where possible, such sentences should be coupled with an order of deportation. Such orders, coupled with effective use of State resources to curb entry of illegal foreigners into South Africa will significantly reduce the prevalence of these offenses.
- 3.1.22 This, in our view, will assist with the seamless operation of the order in ensuring that illegal foreigners are deported immediately after completing their sentences or after paying the fine, as the case may be.”
10. In my view, the judgment in Cuna does not appear to identify the statutory or jurisprudential basis for its decision. It appears, at least in part, to have been motivated by a need to assist in the seamless operation of deportation and was informed by section 32 of the Act which provides that a person who is illegally in the country must be deported. Cuna and the other judgments mentioned above will be dealt with in some further detail below.

The jurisdiction and powers of Magistrates’ Courts in relation to sentencing

11. The essence is that Magistrates’ Courts are creatures of statute and their powers are only sourced in statute.
12. The Magistrates’ Courts Act 32 of 1944 (“the MCA”) provides for the establishment of the Magistrates’ Courts. Section 12(1)(b) of the MCA provides that a magistrate “... *shall possess the powers and perform the duties conferred or imposed upon Magistrates by any law for the time being in force within the province wherein his district is situate.*”
13. Chapter 8 of the Constitution Act, 1996, (“the Constitution”) deals with courts and the administration of justice. Section 165(1) provides that the judicial authority of the Republic is vested in the courts. Section 166 provides for the different courts within the judicial system, including the Magistrates’ Courts. Sections 167, 168 and 169, respectively, deal with the composition, jurisdiction

and powers of the Constitutional Court, the Supreme Court of Appeal and the High Court of South Africa. Section 170 deals with other courts. It provides:

“All courts other than those referred to in sections 167, 168 and 169 may decide any matter determined by an Act of Parliament, but a court of a status lower than the High Court of South Africa may not enquire into or rule on the constitutionality of any legislation or any conduct of the President.” [Emphasis supplied]

14. Section 173 of the Constitution provides as follows:

“The Constitutional Court, the Supreme Court of Appeal and the High Court of South Africa each has the inherent power to protect and regulate their own process, and to develop the common law, taking into account the interests of justice.”

15. The following flows from the above provisions:

15.1. Magistrates’ Courts, unlike the Constitutional Court, the Supreme Court of Appeal and the High Court, may only decide matters when statute confers upon them the jurisdiction and power to do so.

15.2. Unlike the Constitutional Court, the Supreme Court of Appeal, and the High Court, Magistrates’ Courts have no inherent power to protect and regulate their own process, or to develop the common law.

15.3. Magistrates’ Courts are creatures of statute and have no jurisdiction beyond that granted by the Constitution, or by statute: Blue Chip 2 (Pty) Ltd t/a Blue Chip 49 v Ryneveldt (National Credit Regulator as amicus curiae) 2016 (6) SA 102 (SCA) at paragraph 10; Rugave at paragraph 4; Nedbank Limited v Jones 2017 (2) SA 473 (WCC) at paragraph 16.

16. The criminal jurisdiction of Magistrates’ Courts is dealt with in Chapter 12 of the MCA. Section 92 deals with the limits of the jurisdiction of Magistrates’ Court as to punishment. It provides as follows:

“(1) Save as otherwise in this Act or in any other law specially provided, the court, whenever it may punish a person for an offence -

- (a) by imprisonment, may impose a sentence of imprisonment for a period not exceeding three years, where the court is not the court of a regional division, or not exceeding 15 years, where the court is the court of a regional division;
 - (b) by fine, may impose a fine not exceeding the amount determined by the Minister from time to time by notice in the Gazette for the respective courts referred to in paragraph (a);
 - (c) ...
 - (d) by correctional supervision, may impose correctional supervision for a period as contemplated in section 276A(1)(b) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).
- (2)
- (a) The court shall have jurisdiction to impose any punishment prescribed in respect of an offence under an ordinance of a province or the territory which relates to vehicles and the regulation of traffic on public roads, notwithstanding that such punishment exceeds the jurisdiction referred to in subsection (1).
 - (b) Where a person is convicted of culpable homicide arising out of the driving of a vehicle as defined in any applicable ordinance referred to in paragraph (a), the court shall have jurisdiction to impose any punishment which the court may impose under that paragraph in respect of the offence of driving a vehicle recklessly on a public road.”
- [Emphasis supplied]

17. Chapter 28 of the CPA deals with sentence. Section 276 deals with the nature of punishments. It provides as follows:

- “(1) Subject to the provisions of this Act and any other law and of the common law, the following sentences may be passed upon a person convicted of an offence, namely -
- (a) ...
 - (b) imprisonment, including imprisonment for life or imprisonment for an indefinite period as referred to in section 286B(1);
 - (c) periodical imprisonment;
 - (d) declaration as an habitual criminal;
 - (e) committal to any institution established by law;
 - (f) a fine;
 - (g) ...
 - (h) correctional supervision;
 - (i) imprisonment from which such a person may be placed under correctional supervision in the discretion of the Commissioner or a parole board.
- (2) Save as is otherwise expressly provided by this Act, no provision thereof shall be construed -
- (a) as authorizing any court to impose any sentence other than or any sentence in excess of the sentence which that court may impose in respect of any offence; or

(b) as derogating from any authority specially conferred upon any court by any law to impose any other punishment or to impose any forfeiture in addition to any other punishment.

(3) Notwithstanding anything to the contrary in any law contained, other than the Criminal Law Amendment Act, 1997 (Act 105 of 1997), the provisions of subsection (1) shall not be construed as prohibiting the court -

(a) from imposing imprisonment together with correctional supervision; or

(b) from imposing the punishment referred to in subsection (1)(h) or (i) in respect of any offence, whether under the common law or a statutory provision, irrespective of whether the law in question provides for such or any other punishment: Provided that any punishment contemplated in this paragraph may not be imposed in any case where the court is obliged to impose a sentence contemplated in section 51(1) or (2), read with section 52, of the Criminal Law Amendment Act, 1997.”

[Emphasis supplied]

18. As appears from the above, neither the Constitution nor the MCA nor the CPA expressly confer on the magistrates’ courts the power to deport.

19. Section 92(1) of the MCA, quoted above, refers to powers “in this Act or in any other law specially provided”. Plainly, the Act is such an ‘*any other law*’ in which the power to deport may be ‘*specifically provided*’. The main question considered in this judgment is whether it is so provided. No other possible source was raised in argument and I was unable to identify any others (on the contrary, the intervening parties appeared to have been *ad idem* that no such statutory power existed).

20. If there is to be a power to deport on the part of Magistrates’ Courts, then, subject to the question of ancillary orders considered below, that requires to be sourced in the Act.

The interpretation of statutes

21. As the Act will require interpretation to consider the above question, the principles applicable to the interpretation of written instruments, including statutes, require some consideration. These principles have been thoroughly traversed by the higher courts in a number of judgments in recent years.¹ The correct approach is that expressed in paragraph 18 of *Endumeni*, the standard reference to which in judgments and counsels' submissions has become what a Judge of Appeal recently described as a 'ritualised incantation'.² Interpretation consequently entails a 'unitary exercise' undertaken with reference to the language used in the instrument (the so-called 'point of departure') assessed not in isolation but with regard to its employment in the instrument read as a whole, the context (or 'factual matrix') of the instrument's creation and its evident object or purpose.
22. In paragraphs 18 and 23 of *Endumeni* the proper approach to interpretation is described as follows:

"The present state of the law can be expressed as follows: Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed; and the material known to those responsible for its production. Where more than one meaning is possible, each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document ... The 'inevitable point of

¹ The leading judgment is *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13 (16 March 2012); [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA). See, amongst others, *University of Johannesburg v Auckland Park Theological Seminary and Another* [2021] ZACC 13 (11 June 2021; 2021 (8) BCLR 807 (CC) ; 2021 (6) SA 1 (CC), *Capitec Bank Holdings Limited and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others* [2021] ZASCA 99 (9 July 2021); [2021] 3 All SA 647 (SCA); 2022 (1) SA 100 (SCA), *Novartis v Maphil* [2015] ZASCA 111 (3 September 2015); 2016 (1) SA 518 (SCA); [2015] 4 All SA 417 (SCA); *Bothma-Batho Transport (Edms) Bpk v S Bothma & Seun Transport (Edms) Bpk* [2013] ZASCA 176; 2014 (2) SA 494 (SCA).

² *Capitec* at paragraph 49

departure is the language of the provision itself, read in context and having regard to the purpose of the provision and the background to the preparation and production of the document. If interpretation is, as all agree it is, an exercise in ascertaining the meaning of the words used in the statute and is objective in form, it is unrelated to whatever intention those responsible for the words may have had at the time they selected them."

23. In *Tongaat Hulett Limited and Others v South African Sugar Association and Others* 2026 (3) SA 108 (SCA), these principles were very recently reiterated:

"[34] These provisions should be construed in accordance with the recognised principles of interpretation. The proper approach to legislative interpretation in our law requires courts to ascertain and give effect to the intention of the legislature, as expressed in the wording of the statute, while also considering the context, purpose, and underlying values of the Constitution. In this regard, the purposive approach is favoured, ensuring that statutory provisions are read holistically and in a manner that promotes the spirit, purport, and objects of the Bill of Rights.

[35] The Constitutional Court, in *Investigating Directorate: Serious Economic Offences and Others v Hyundai Motor Distributors (Pty) Ltd and Others (Hyundai Motor Distributors)*, affirmed that interpretation must be consistent with constitutional values and that ambiguity must be resolved in a way that best promotes those values. Similarly, this Court in *Natal Joint Municipal Pension Fund v Endumeni Municipality* emphasised that statutory interpretation is a unitary exercise, requiring consideration of language, context, and purpose together. These authorities underscore the importance of a contextual, purposive, and constitutionally aligned approach to legislative interpretation.

[36] It is a fundamental tenet of our law of statutory interpretation that legislation must, wherever possible, be read in a manner that is consistent with the Constitution. This principle, often referred to as the doctrine of constitutional compliance, has become a cornerstone of modern interpretive methodology in South Africa. It requires courts to favour an interpretation of statutory provisions that upholds, rather than undermines, constitutional rights and values."

24. In the same decision at paragraph 40, the SCA also observed that statutory provisions must be interpreted within the broader framework of the legislation of which they form part:

"Given the legal principles outlined above, s 136(2) must also be interpreted within the broader framework of Chapter 6 of the Companies Act, which regulates business rescue proceedings. That chapter sets out the statutory framework for business rescue proceedings in South Africa. Its provisions empower business rescue practitioners temporarily to suspend or apply for the cancellation of certain

company obligations arising from agreements concluded before the commencement of business rescue proceedings.”

The nature of deportation

25. The nature of deportation requires consideration as part of the context in which the Act is to be interpreted insofar as the power to deport is concerned. This will assist in informing whether the power to be deport is to be located in the executive branch of government or in the judicial branch or both.

26. The deportation power flows from a State’s right under international law to control its borders. In Mohamed v the President of the Republic of South Africa 2001 (3) SA 893 (CC) the Constitutional Court explained the nature of deportation at paragraph 29:³

“Deportation is essentially a unilateral act of the deporting state in order to get rid of an undesired alien. The purpose of deportation is achieved when such alien leaves the deporting state’s territory; the destination of the deportee is irrelevant to the purpose of deportation.”

27. Foreign courts have repeatedly recognised that deportation serves the limited administrative function of removal and does not operate as a punishment:

27.1. In Fong Yue Ting v United States 149 US 698 (1893) at 730, the United States Supreme Court recognised that:

“The order of deportation is not a punishment for crime. It is not a banishment, in the sense in which that word is often applied to the expulsion of a citizen from his country by way of punishment. It is but a method of enforcing the return to his own country of an alien who has not complied with the conditions upon the performance of which the Government of the nation, acting within its constitutional authority, and through the proper departments, has determined that his continuing to reside here shall depend.”

³³ See also Ex parte Minister of Home Affairs and Others; In re Lawyers for Human Rights v Minister of Home Affairs and Others (CCT 38/16) [2023] ZACC 34; 2024 (1) BCLR 70 (CC); 2024 (2) SA 58 (CC) at paragraph 9

27.2. In R v Nazari [1980] 1 WLR 1366 at 1373F-H, the Court of Appeal for England and Wales recognised that deportation decisions often involve politically sensitive matters that are best left to the executive. It is therefore a power that the judicial arm of the State should not exercise:

“... the courts are not concerned with the political systems which operate in other countries. They may be harsh; they may be soft; they may be oppressive; they may be the quintessence of democracy. The court has no knowledge of those matters over and above that which is common knowledge; and that may be wrong. In our judgment it would be undesirable for this court or any other court to express views about regimes which exist outside the United Kingdom of Great Britain and Northern Ireland. It is for the Home Secretary to decide in each case whether an offender's return to his country of origin would have consequences which would make his compulsory return unduly harsh. The Home Secretary has opportunities of informing himself about what is happening in other countries which the courts do not have.”

27.3. In Maaouia v France (Application 39652/98) ECHR (5 October 2000) at paragraph 29, the European Court of Human Rights accepted France's concession that deportation does not operate as a punishment but is intended to expel an unlawful foreigner. The court noted that there are some jurisdictions in Europe that afford their courts the power to make deportation orders by law, but that this was “*unusual*” and that, even where this power is so conferred by statute, it does not operate as a punishment:

“The Government further pointed out that under the Commission's settled case-law, deportation and exclusion orders did not concern criminal charges or amount to punishment for the purposes of Article 6 of the Convention. The Government agreed with that analysis, which was based on the elementary observation that exclusion orders were not penalties, but administrative measures, even if, unusually, the legislature had assigned the task of making such orders to the criminal courts. Indeed, that observation was supported by the fact that under the laws of most States the administrative authorities were also competent to make such orders, the purpose being not to punish a specific act but to deter foreign nationals from further infringing the legislation on the entry and stay of aliens. The aim of exclusion orders was therefore essentially preventive. It was that special characteristic that made it possible to request the rescission of such orders, no equivalent remedy being available for criminal penalties in the strict sense.”

28. The act of deportation therefore appears to be administrative. It does not serve to punish illegal foreigners, but to remove them from a State because they have no entitlement to be there. Once they are removed, the objective of deportation is fulfilled. Deportation is not a punishment. It is an act that arises from the State's power to regulate and control those within its borders.

Whether the Act confers a power to deport on courts

29. The question is whether a magistrates' court has the power to order a deportation. On my reading thereof, the source of the authority to make a deportation order was not identified by the court in Cuna or the cases that followed it. As mentioned, the only possible source which arose in argument and which occurred to me was the Act (aside from the aspect of ancillary orders, considered below).

30. The starting point is the basic principle that a public power, in this case to deport, must have a source in law. As held in AAA Investments (Pty) Ltd v Micro Finance Regulatory Council 2007 (1) SA 343 (CC) at paragraph 68:

"Public power on the other hand can only be validly exercised if it is clearly sourced in law."

31. The principle of legality restrains the exercise of all public power,⁴ including the power exercised by the courts: National Director of Public Prosecutions v Zuma 2009 (2) SA 277 (SCA) at paragraph 15. In Lester v Ndlambe Municipality and Another 2015 (6) SA 283 (SCA) it was held at paragraph 26, citing Zuma, that:

"... the courts are similarly constrained by the doctrine of legality, i.e. to exercise only those powers bestowed upon them by law".

⁴ Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council 1999 (1) SA 374 (CC) at paragraph 58; Pharmaceutical Manufacturers Association of SA: In re Ex Parte President of the Republic of South Africa 2000 (2) SA 674 (CC) at paragraph 17; Justice Alliance of South Africa v Republic of South Africa 2011 (5) SA 388 (CC) at paragraphs 29 and 30.

32. The crisp question, therefore, is whether the power to deport has been bestowed upon the magistrates' courts by the Act and, if so, how.
33. As mentioned, the power of a magistrates' court must be sourced in statute. Unlike the high court, it has no inherent jurisdiction, and it has no power to make remedial orders that are just and equitable.⁵
34. The relevant provisions of the Constitution, MCA and the CPA have been considered and none of them bestow upon the courts the power to deport.
35. Section 34 of the Act regulates deportation. It vests the power to deport in immigration officers and only they have the power to deport. The definition of immigration officer does not include magistrates. Section 34 (1) of the Act empowers an immigration officer to arrest illegal foreigners, deport them and detain them pending deportation. The entire scheme and structure of section 34 is premised on an immigration officer exercising the deportation power. This, in my view, is compatible with the act of deportation being an administrative act.
36. Section 34 provides as follows:⁶

⁵ *Ndlovu v S* 2017 (2) SACR 305 (CC) at paragraph 41; *S and Others v Van Rooyen and Others (General Council of the Bar)* 2002 (2) SACR 222 (CC) at paragraph 28; *Nedbank Limited v Jones and Others* 2017 (2) SA 473 (WCC) at paragraph 16.

⁶ In *Lawyers for Human Rights v Minister of Home Affairs and Others* 2017 (5) SA 580 (CC) the Constitutional Court declared sections 34(1)(b) and (d) of the Immigration Act to be inconsistent with sections 12(1) and 35(2)(d) of the Constitution and therefore invalid. The Court suspended the declaration of invalidity for a period of twenty-four months in order to enable Parliament to correct the defect. The Court ordered further that, pending such legislation, any illegal foreigner detained in terms of section 34(1) shall be brought before a court in person within 48 hours from the time of arrest or not later than the first court day after the expiry of the 48 hours, if the 48 hours expired outside the ordinary court days. Parliament failed to enact the required legislation timeously, whereafter the Department of Home Affairs again approached the Constitutional Court for an extension of the already lapsed period of suspension. In *Ex parte Minister of Home Affairs and Others; in re Lawyers for Human Rights v Minister of Home Affairs and Others* 2024 (2) SA 58 (CC), the Court made further orders regulating the time within which a detained illegal foreigner must be brought before court, the considerations that must be taken into account by, respectively, an immigration officer considering the arrest and detention of an illegal foreigner in terms of section 34(1) and a court considering whether the interests of justice permit the release of such person. The Court further ordered that, if the

- “(1) Without the need for a warrant, an immigration officer may arrest an illegal foreigner or cause him or her to be arrested, and shall, irrespective of whether such foreigner is arrested, deport him or her or cause him or her to be deported and may, pending his or her deportation, detain him or her or cause him or her to be detained in a manner and at a place determined by the Director-General, provided that the foreigner concerned –
- (a) shall be notified in writing of the decision to deport him or her and of his or her right to appeal such decision in terms of this Act;
 - (b) may at any time request any officer attending to him or her that his or her detention for the purpose of deportation be confirmed by warrant of a Court, which, if not issued within 48 hours of such request, shall cause the immediate release of such foreigner;
 - (c) shall be informed upon arrest or immediately thereafter of the rights set out in the preceding two paragraphs, when possible, practicable and available in a language that he or she understands;
 - (d) may not be held in detention for longer than 30 calendar days without a warrant of a Court which on good and reasonable grounds may extend such detention for an adequate period not exceeding 90 calendar days, and
 - (e) shall be held in detention in compliance with minimum prescribed standards protecting his or her dignity and relevant human rights.
- (2)
- (3)
- (4)
- (5) Any person other than a citizen or a permanent resident who having been -
- (a) removed from the Republic or while being subject to an order issued under a law to leave the Republic, returns thereto without lawful authority or fails to comply with such order; or
 - (b) refused admission, whether before or after the commencement of this Act, has entered the Republic,
- shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months and may, if not already in detention, be arrested without warrant and deported under a warrant issued by a Court and, pending his or her removal, be detained in the manner and at the place determined by the Director-General.
- (6) Any illegal foreigner convicted and sentenced under this Act may be deported before the expiration of his or her sentence and his or her imprisonment shall terminate at that time.
- (7) On the basis of a warrant for the removal or release of a detained illegal foreigner, the person in charge of the prison concerned shall deliver such foreigner to that immigration officer or police officer bearing such warrant, and if such foreigner is not released he or she shall be deemed to be in lawful custody while in the custody of the immigration officer or police officer bearing such warrant.”
- [Emphasis supplied]

required remedial legislation is not enacted within a period of twelve months, its order would remain in force until enactment of such legislation. Although remedial legislation has been enacted, it has not been brought into effect as yet.

37. It is apparent from the provisions of section 34(1) that an immigration officer has the following powers in respect of an illegal foreigner:
- 37.1. to arrest;
 - 37.2. to detain pending his or her deportation;
 - 37.3. to deport.
38. The Act provides for powers of the courts which relate to or are incidental to deportation but which do not include the power to deport.
39. Section 34(1)(b) of the Act:
- 39.1. In terms of section 34(1)(b) of the Act, at the request of an illegal foreigner who has been detained, his/her detention is to “... *be confirmed by warrant of a Court, which, if not issued within 48 hours of such request, shall cause the immediate release of such foreigner.*”
 - 39.2. This concerns whether a detention is lawful. This, in my view, is neither the decision to deport, nor the exercise of the power to deport, by a court.
40. Section 34(5) of the Act (see also paragraph 58 below):
- 40.1. Section 34(5) of the Act concerns the situation where persons enter the Republic while already subject to pre-existing decisions which excluded them from the Republic (deportation or refusal of admission). In such event they can be arrested under a warrant issued by a court and detained pending removal.
 - 40.2. Where a court acts in terms of section 34(5), it has the power to issue a warrant for the person’s arrest and that person is to be deported under that warrant. That, however, is not the power to deport: the accused

having either been deported already or having entered the country after already having been refused permission to do so, the warrant is to enforce that deportation or refusal of entry. In both instances the (administrative) decision in question (to deport or to refuse entry) has already been made and the statutory function of the court is to enforce that decision by means of the issue of a warrant.

40.3. The court's role is to issue a warrant arising from the pre-existing lawful decision, in order to enforce that decision. This, in my view, is neither the decision to deport, nor the exercise of the power to deport, by a court.

41. In argument (and in Cuna), it was suggested that section 34(6) is the provision authorising courts to deport illegal foreigners. In this regard:

41.1. Section 34(6) provides as follows:

“Any illegal foreigner convicted and sentenced under this Act may be deported before the expiration of his or her sentence and his or her imprisonment shall terminate at that time.”

41.2. This concerns deportation not having to wait until a sentence has run its course. It may be processed and enforced before the sentence has been served, and, if it so, the imprisonment shall terminate. In other words, it caters for the situation of a person being deported while serving a sentence. This is reinforced by the provisions of section 34(7).

41.3. The wording of the section does not convey any intention to confer jurisdiction upon a court to order the deportation of an illegal foreigner.

41.4. Rather, on a plain reading thereof, it regulates that, notwithstanding a sentence of imprisonment, an illegal foreigner may be deported prior to its termination, and that on the implementation thereof the sentence of imprisonment terminates.

- 41.5. That deportation is to be made in accordance with the provisions and procedures of the Act.
- 41.6. Where a sentence of imprisonment has been imposed under one or other provision of the Act, such sentence terminates once the illegal foreigner is deported.
- 41.7. The import of section 34(6) is the impact of deportation on a prison sentence. It has nothing to do with where the power to deport resides.
- 41.8. Such a provision makes sense because, in its absence, the illegal foreigner would have to serve the sentence of imprisonment and could only be deported thereafter. By virtue of section 34(6), deportation does not have to be delayed, and the person may be deported even though the sentence of imprisonment has not been served to completion, in which event the imprisonment terminates.
- 41.9. Properly construed, the provision does not confer any power on a court to order the deportation of an illegal foreigner. Rather, as argued by Mr Jamie, who appeared with Mr Mayosi for the Minister of Home Affairs and the Minister of Correctional Services, it resolves the tension between section 34(6) and 34(7).
- 41.10. Such power remains within the sole purview of an immigration officer, as provided for in section 34(1).
- 41.11. In my view, this section 34(6) does not, on a proper interpretation thereof, confer jurisdiction upon a court to order the deportation of an illegal foreigner, more especially after a conviction and the imposition of a sentence in terms of section 49(1)(a) of the Immigration Act.
- 41.12. The reliance on section 34(6) in Cuna and by the State in argument in this matter is therefore, in my view, misplaced.

42. Further, the courts have review jurisdiction to determine whether a deportation decision, and any appeal arising from that decision in terms of section 8 of the Act, was determined lawfully.

43. Prior to its amendment in 2004, section 37 of the Act provided as follows:

“37.(1) Every magistrates’ court is an Immigration Court for the purposes of this Act and shall have jurisdiction on any matter arising from the application of this Act, including, but not limited to –

- (a) the review of decisions of the Department;
- (b) any legal proceedings against the Department; and
- (c) any matter concerning status.

(2) Any legal proceedings arising from the application of this Act shall be dealt with as soon as is reasonably possible and the Courts must ensure that such proceedings are finalised without any unavoidable delay.

The Rules Board for Courts of Law established in terms of the Rules Board of Courts of Law Act, 1985 (Act No. 107 of 1985), shall as soon as reasonably possible after the commencement of this Act make rules aimed at facilitating the adjudication of any matter arising from this Act in a simplified and expeditious manner.”

44. The Act was amended by the Immigration Amendment Act 19 of 2004, repealing section 37 in its entirety. Section 37 established magistrates’ courts as immigration courts and conferred considerably wider jurisdiction on them than is currently the case. They had jurisdiction in relation to *any matter* arising from the application of the Act. The removal of this provision indicates a legislative decision that magistrates’ courts would no longer have extensive jurisdiction of the nature conferred upon them in terms of section 37.

45. The power of a court to order deportation remains a question of *vires*. As mentioned, two constitutional principles are of importance in construing the ambit of the court’s powers: the legality principle and the requirement that statutes be read in a manner that is consonant with the underlying values of the

Constitution, and that promotes the spirit, purport and objects of the Bill of Rights (Tongaat Hulett at paragraphs 34 to 36).

46. As to the legality principle, it entails that no-one may exercise a power or perform a function not conferred upon them by law. If they purport to do so, they act unlawfully (Law Society of South Africa and Others v President of the Republic of South Africa and Others 2019 (3) SA 30 (CC) at paragraphs 46 to 48 and 56). As demonstrated above, there is no statutory basis for a magistrates' court to order deportation. In the absence of such a statutory basis, magistrates' courts have no such power.
47. Section 49(1)(a) of the Act provides 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 to imprisonment not exceeding two years.”
48. In terms of section 49(1)(a), a court may, upon conviction, impose a sentence of a fine, or of imprisonment not exceeding two years.
49. The statutory framework considered above is to the effect that a court, whether a magistrates' court or another court, has no jurisdiction to impose any other sentence, save those provided for in the Act.
50. Section 276(2)(a) of the CPA (quoted above) is of particular relevance in this regard, in that it provides that, save as is otherwise expressly provided for in the CPA, no provision thereof shall be construed as authorising any court to impose any sentence other than, or in excess of, the sentence which that court may impose in respect of any offence.

51. Given the provisions of section 49(1), it follows that magistrates' courts are confined to the sentences expressly provided for therein insofar as the offences provided for therein are concerned.
52. A consideration of section 49(1)(b) further fortifies this conclusion:
- “Any illegal foreigner who fails to depart when so ordered by the Director-General, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding four years.”
53. That provision, apart from regulating different conduct, namely a failure to depart when so ordered by the Director-General, imposes its own permissible sentences, which, similarly, may not be departed from by a court following a conviction in terms thereof.
54. None of the remaining provisions of section 49 confer the power on any court to order the deportation of an illegal foreigner. The section is concerned with the creation of offences for non-compliance with the provisions of the Act, and for the sentences to be imposed following upon conviction. The section does not, in its terms, deal with the conferring of the power to deport an illegal foreigner.
55. In my view, no provision of the Act vests the courts with power to make deportation orders at all, let alone deportation orders in sentencing proceedings.

The power to deport provided for in the Act

56. The statutory position considered above is unsurprising because the aspect of the deportation of illegal foreigners is dealt with in a different part of the Act, that relating to enforcement and monitoring, whereas section 49 is located in the

part of the Act dealing with offences. Section 32 is the first section in the enforcement part of the Act. It provides as follows:

- “(1) Any illegal foreigner shall depart, unless authorised by the Director-General in the prescribed manner to remain in the Republic pending his or her application for a status.
- (2) Any illegal foreigner shall be deported.”

57. Section 34, quoted above, deals with the deportation and detention of illegal foreigners.

58. As dealt with above (particularly in paragraph 40), when an illegal foreigner has been convicted, under section 34(5), a court may both convict and sentence such person. Where a court acts in terms of section 34(5), it has the power to issue a warrant for the person's deportation. As considered above, that, however, is not the power to deport, the accused having either been deported already or having entered the country having already been refused permission to do so. In both instances the administrative decision in question (to deport or to refuse entry) has already been made and the statutory function of the court is to enforce that decision by means of the issue of a warrant. That, however, is not the decision to deport.

59. The distinct difference in language between sections 34(5) and 49(1)(a), where both provisions deal with the power of a court to convict and to sentence an offender under the Act, is a strong indication of a different legislative intention in relation to the two situations. This was recently recognised in S v Aihua (R62/2025; R63/2025; R64/2025) [2026] ZAGPJHC 887 (30 July 2026) at paragraph 8 as follows: “... *it is necessary to understand the architecture of the Immigration Act. The Act distinguishes between two distinct but interrelated*

consequences for illegal foreigners: criminal punishment under section 49 and deportation under section 34.”

60. If the legislature intended a court convicting an illegal foreigner in terms of section 49(1)(a) to have the power to order the deportation of such illegal foreigner or issue a warrant for such deportation, it would have inserted wording similar to that to be found in section 34(5). It has not.⁷
61. In Lawyers for Human Rights v Minister of Home Affairs and Others 2017 (5) SA 480 (CC) at paragraph 24 to 26, the Constitutional Court affirmed that, *inter alia*, the section 12 right applied to illegal foreigners, and that the denial thereof would negate the values of human dignity, equality and freedom. Section 49(1)(a) is readily subject to an interpretation that does not impact on the section 12 right, and on other constitutional rights. That interpretation is to be preferred: Moyo and Another v Minister of Police and Others; Sonti and Another v Minister of Police and Others 2020 (1) SACR 373 (CC) at paragraph 56. Accordingly, and apart from the textual and contextual indicators as to the proper interpretation of section 49(1)(a), the aforementioned constitutional principles promote the same conclusion.
62. In conclusion, and upon a proper construction thereof, neither section 49(1) nor any other provision of the Act or any other law, authorises the magistrates' courts to order the deportation of an illegal foreigner convicted in terms of section 49(1) of the Act, that power being the purview of immigration officials provided for in section 34 of the Act.

⁷ Marine & Trade Insurance Co Limited v Workmen's Compensation Commissioner 1972 (1) SA 535 (N) at 539. For a discussion of this principle, and the manner in which it must be applied, see: Devenish on Interpretation: Statutory Interpretation, Vol 1, at p 401

Cuna and other judgments dealing with the issue considered in further detail in the light of the foregoing analysis

63. Louis Alberto Cuna v S (Sentence Appeal) (A6/2020) [2020] ZAGPPHC 790 (15 December 2020), a decision of two Judges, is the most prominent judgment, holding that courts convicting a person of a contravention of section 49(1)(a) of the Immigration Act must, in addition, make an order for such person's deportation.

64. Cuna was an appeal from a sentence imposed in the magistrates' court for the District of Ekurhuleni, Benoni. That court had not made an order that the accused be deported.⁸ Paragraph 3.1.4 of the judgment recognised that, pursuant to the provisions of section 34 of the Act, it was an immigration officer who is empowered to enforce the process of detention and the deportation of an illegal foreigner. At paragraph 3.1.13, the court stated the following:

"The Trial Court, having accepted at the time, that other material factors, supra, where (sic) to be considered unfortunately failed to consider them and apply any weight thereto in exercising its discretion, and failed, as well, to make an order for the deportation of the Appellant."

65. The gravamen of the judgment appears from the following paragraphs:

"3.1.16 The Immigration Act provides that a person who has contravened Section 49(1) thereof shall, on conviction, be liable to a fine or to imprisonment not exceeding two years. It is our view that, once an accused has been found guilty in terms of Section 49(1) and sentenced either to a fine or imprisonment, the trial court must in addition make an order for his or her deportation.

3.1.17 The order so made, where the sentence of imprisonment has been imposed, can be that he or she be deported after serving the sentence or he or she be deported in terms of section 34(6) of the Immigration Act. Section 34(6) provides that any illegal foreigner convicted and sentenced under this Act may be deported before the expiration of his or her sentence and his or her sentence shall terminate at that time.

3.1.18 This situation, in our opinion, could have been alleviated by the trial court making a deportation order in addition to the sentence it imposed.

⁸ At paragraphs 1.1 and 1.15

...

3.1.21 The judiciary is required to impose sentences dictated by facts of each case. This Appeal Court is in agreement that where possible, such sentences should be coupled with an order of deportation. Such orders, coupled with effective use of State resources to curb entry of illegal foreigners into South Africa will significantly reduce the prevalence of these offenses.

3.1.22 This, in our view, will assist with the seamless operation of the order in ensuring that illegal foreigners are deported immediately after completing their sentences or after paying the fine, as the case may be.”

[Emphasis supplied]

66. In my view, the judgment contains no reasoning in support of its central conclusion, in paragraph 3.1.16 of the judgment, that a magistrates’ court, upon conviction of an illegal foreigner in terms of section 49(1) of the Act, is authorised, let alone obliged, to make a deportation order in respect of such person. There is no jurisprudential basis for the power or authority to make such an order, or to be obliged to do so (an obligation in this respect could attract constitutional implications adverted to above, but that is beyond the purview of this judgment). The highwater mark of the judgment appears to be the reference in paragraph 3.1.17 thereof to section 34(6). For the reasons already dealt with, that section does not, however, in my view, confer jurisdiction upon a court to make an order of deportation. On the contrary, it concerns the situation where a person has been ordered to be deported under the Act but is serving a prison sentence – what section 34(6) sensibly achieves is to allow for the person to be removed from the country prior to having served the full period of imprisonment, in which event the imprisonment terminates.

67. For the reasons dealt with in the section above dealing with the powers of magistrates’ courts, and the proper interpretation of section 49(1), such courts have no power other than those expressly conferred by statute. In my view, there is no statutory provision conferring upon such courts the power to order

the deportation of illegal foreigners, for the reasons already dealt with, and Cuna does not identify one.

68. Finally, in relation to Cuna, insofar as the court may have viewed the prevalence of immigration offences as requiring to be addressed in order to assist with the “*seamless operation*” of deporting foreigners, while this state of affairs may be so, it cannot serve to create a power where none exists. Any Judge of this division who has sat in the unopposed motion court or in the urgent court, which includes the full panel of this full bench, will have experienced what is becoming a significant flow of immigration litigation in relation to deportation. I suspect that the position can only be much more pronounced in the Gauteng division of the high court. While this may be the case, the function of the courts is to apply the law, not to assist the executive organs of state in a manner not permitted by law: Phillips and Others v National Director of Public Prosecutions 2006 (1) SA 505 (CC) at paragraphs 46 to 52, in which the court was dealing with the inherent powers of superior courts. A *fortiori*, this applies to magistrates’ courts which lack such powers. Whether the power to deport is to be vested in the magistrates’ court is a decision of the legislature, not the courts.

69. In Maphosa v S (A198/2020) [2021] ZAGPPHC 84 (1 March 2021) at paragraphs 28 and 29, another two judge bench of the same court applied and followed Cuna, adopting the conclusion that, once an accused had been found guilty in terms of section 49(1) of the Act, and sentenced either to a fine or imprisonment, the trial court must in addition make a deportation order. Maphosa applied Cuna without any analysis of its reasoning or by providing its

own reasons. It applied Cuna because it had been decided as such. Maphosa therefore does not take the matter further.

70. S v Lucas (CC72/2019) [2022] ZAGPPHC 346 (13 May 2022) dealt with a Malawian national charged with murder, robbery with aggravating circumstances, and a contravention of section 49(14) of the Immigration Act. At paragraph 58, the court commented on the influx of illegal foreigners into the country. Reference was made to Maphosa and Cuna at paragraphs 61 and 62. The court ordered that the accused be deported after serving his sentence, stating the following at paragraph 63:

“This court is bound by the doctrine of stare decisis and by statute, and it follows that the accused must be deported after serving his sentence.”

71. Lucas did not analyse the reasoning and conclusions reached in either Maphosa or Cuna, nor did it apply its own analysis of the relevant provisions. It referred to the requirement in section 32(2) of the Act that any illegal foreigner shall be deported, but it did not analyse the provision any further. Insofar as section 32(2) is concerned, that section, in my view, plainly does not confer jurisdiction on a magistrates’ court to order deportation. Properly construed, what section 32(2) requires is that an illegal foreigner be deported. It is left to other provisions of the Act to regulate deportation. For the reasons dealt with above, such provision is section 34, and in particular section 34(1), which confers the power to deport upon an immigration officer, not a court.

72. The final judgment of which I am aware to have followed Cuna is S v Chivabo (HC 14/2024) [2024] ZANWHC 156 (27 June 2024), a review before two judges. The presiding magistrate had declined to make a deportation order pursuant to a conviction in terms of section 49(1) of the Act, and the Chief

Magistrate had thereafter referred the matter for review. At paragraph 8 to 12 the court referred to Cuna and Maphosa and found that the magistrate was bound by the principle of *stare decisis* and should have imposed a deportation order. There was no analysis of the judgments in Cuna or Maphosa, nor did it undertake its own analysis. Chivabo therefore takes the matter no further.

73. In neither Cuna nor any of the judgments that followed and applied was reference made to Rugave v S (Review) (151/2016; DL117/2015) [2016] ZALMPPHC 18 (12 October 2016) in which a review court comprising two judges reviewed and set aside an order by the magistrates' court in terms whereof that court, consequent to a conviction in terms of section 49(1)(a) of the Act, had ordered the deportation of the accused.⁹ After recording that the matter had been referred to the Office of the Director of Public Prosecutions, which expressed the view that the magistrate was not entitled to order the deportation of the accused, a view with which the court expressed agreement, it held as follows at paragraph 4:

"A magistrates' Court is a creature of statute. It only has the jurisdiction which is conferred upon it by statute. It exercises no inherent jurisdiction and can accordingly not adjudicate matters which fall outside of its expressly conferred jurisdiction and cannot grant orders other than those it is expressly authorised to grant - Nedbank Ltd v Norris and Others 2016 (3) SA 568 (ECP) at para 45."

74. After referring to sections 34(1) and 49(1)(a) of the Act, the court held as follows at paragraph 7:

"The two sections do not make a reference to the court having powers to deport a foreigner. It is therefore impermissible for a court to impose an order not expressly sanctioned by law."

⁹ At paragraph 2

75. While the reasoning is pithy, with the judgment consisting of only eight paragraphs, in my view, the conclusion reached in Rugave is correct, being consistent with the analysis, reasoning and conclusions set out in this judgment.
76. The principle of *stare decisis* requires a court to follow decisions of courts higher than it in the judicial hierarchy, or courts of equal status unless satisfied that its decision is clearly wrong.¹⁰ Cuna and the judgments that followed it are neither of these, insofar as this court is concerned, being a full bench of a separate division, and are therefore only persuasive, not binding. Cuna and the judgments that followed it are, in my view, incorrect, for the reasons articulated above and I am not persuaded to follow them and decline to do so.

Consequences of Cuna and the cases that follow it

77. Cuna holds that deportation orders are mandatory where an accused is convicted of an offence under section 49(1) of the Act. On that authority, a magistrate has no discretion but to order a deportation. The deportee is deprived of their right to an internal appeal under section 8 of the Act. That appeal would allow the deportee to place all the relevant facts and circumstances before the Director General and the Minister of Home Affairs regarding the deportation decision. The Act contemplates that a deportation decision by an immigration officer may be wrong and should not operate automatically. It builds in protections through an internal appeal mechanism and does not treat the decision as automatic. Cuna renders all considerations other than a conviction under section 49, as irrelevant to a decision to deport.

¹⁰ Erasmus Superior Court Practice, 3rd Edition, at page D-118A. See also Ruta v Minister of Home Affairs 2019 (2) SA 329 (CC) at paragraph 21

78. The *Amicus Curiae* made what appear to be cogent submissions as to there being unintended consequences to this approach:

78.1. First, it could have the effect of separating families and violating the rights of the child under section 28 of the Constitution. The family life of the deportee is relevant to any deportation decision that is taken. But Cuna renders these considerations irrelevant, following a conviction for a section 49 offence. In Rayment v Minister of Home Affairs 2024 (2) SA 591 (CC) the Constitutional Court held at paragraph 97:

“I, therefore, emphasise that, in requiring the foreign national to leave the country, the provisions of the Immigration Act may separate a parent from his or her child and may prevent such a foreign national from living with his or her child. The provisions thus also limit the child’s right to human dignity: Indeed, both provisions of the Immigration Act – sections 10(6)(b) and 18(2) – require a foreign national whose spousal visitor’s visa has expired to leave the Republic and the provision which prohibits such a foreign national from working or conducting a business also limits the rights of the child protected by section 28(1)(b) and (2) of the Constitution as was also held to be the case by this Court in *Nandutu*. There may be other rights entrenched in the Bill of Rights that are also limited by the Immigration Act. However, it is not necessary to deal with them all at the same time.”

78.2. Second, a deportation order – as required by Cuna – may violate the *non-refoulement* principle. The order may have the effect of deporting the convicted person to a place he/she will face persecution, without providing him/her an opportunity to apply for asylum. In this instance, deportation will operate as a punishment which is prohibited by article 31 of the Refugees Convention. The Constitutional Court has repeatedly recognised the importance of *non-refoulement* and the international law obligation not to impose penalties. For example, see Scalabrini Centre of Cape Town and Another v Minister of Home Affairs and Others

(CCT126/25) [2026] ZACC 30 (7 July 2026) at paragraphs 9, 10, 34 and 35.

78.3. Third, it could have adverse consequences in combatting cross-border trafficking offences. Very often, the only evidence in trafficking is the presence of the trafficked person. The automatic deportation order required by Cuna does not consider whether the presence of the trafficked person may be necessary for purposes of criminal proceedings. It mandates the deportation of the trafficked person, notwithstanding the possible need for this evidence.

78.4. Fourth, there is no reason why a deportee under section 34 of the Act should have greater rights than a deportee who is brought before court on a charge under section 49 of the Act.

Whether an order to deport is an ancillary order

79. In argument, the State contended that a deportation order is a sentence ancillary to a conviction in terms of section 49(1) of the Act.

80. An ancillary order is a sentence handed down by a court as a consequence of a criminal conviction. While it is not a primary punishment (such as imprisonment, a fine, or correctional supervision), it serves as a secondary statutory mechanism to protect the public, manage risk, or safeguard victims.

81. The source of the power in this regard is not to be found in the MCA or the CPA (particularly section 276 thereof), but in other specific statutes. A very common example is section 103 of the Firearms Control Act 60 of 2000 in terms of which an accused convicted of certain offences listed therein may be declared unfit to possess a firearm. Other examples include section 50 of the Criminal Law

(Sexual Offences and Related Matters) Amendment Act 32 of 2007, section 120 of the Children's Act 38 of 2005, section 31 of the Older Person's Act 13 of 2006, section 29 of the Prevention and Combating of Corrupt Activities Act 12 of 2004 and section 35 of the National Road Traffic Act 93 of 1996. In this regard, see S v Antonio (136/2024) [2024] ZAWCHC 121; 2024 (2) SACR 62 (WCC) (3 May 2024).

82. There is no statute providing for deportation to be an ancillary order. Although it does not have to be there, logic suggests that, if there were to be such a provision in a statute, it would be located in the Act. As held above, it is not. The State's argument in this respect is declined to be followed.

Conclusion

83. In my view, the magistrates' courts do not have the power to order the deportation of illegal foreigners.

Brief consideration of each of the matters

State v Ibrahim Hashim (Kinyo): Case No. 92/2025

84. This matter served before me as an automatic review in terms of section 304 of the CPA. The accused was charged with a contravention of section 4(a) and (b) of Act 140 of 1992, as well as a contravention of section 49(1)(a) of the Act. The accused was convicted after a plea of guilty and sentenced on the first count to a fine of R2 000.00 or sixty days imprisonment and in respect of the second count to a fine of R3 000.00 or ninety days imprisonment. In my view, these convictions and sentences are in accordance with justice.
85. In addition, the Magistrate made the following order:

“Accused must be deported to his Country of origin Tanzania – after serving the Sentence or paying the fine. Further detention to [be] effected for purposes of deportation.”

86. The court signed the order for deportation in the form of what appears to be a template used by magistrates’ courts in this division, and which cites Cuna as authority for the deportation order and applies it in terms. My consideration of the papers in that matter and my reading of Cuna with the Act revealed the possible problem of a lack of statutory or jurisprudential basis for such an order, hence my request for reasons for the deportation order. The presiding magistrate responded on 27 November 2025, indicating that, “*Where the accused has been found guilty in terms [of section] 49(1) and sentenced either to a fine or imprisonment the court must make an order for him/her to be deported.*” It was flowing from this that I referred the matter to the Judge President for consideration and she thereafter convened this full bench to consider it and the others placed before it.
87. For the reasons articulated in this judgment, the deportation order is invalid in law and falls to be set aside.

State v Prince Mbanza: Case No. 30/2026

88. The accused was charged with one count of contravening section 49(1)(a) of the Act, as well with a second count of theft. The accused pleaded guilty to the immigration charge and was duly convicted and sentenced to a fine of R3 000.00 or ninety days imprisonment. In my view, the conviction and sentence are in accordance with justice. On 20 March 2026, and following upon the conviction and sentence, the presiding magistrate made an order for deportation, once again in the form of the aforementioned template, and on the authority of Cuna.

89. For the reasons articulated in this judgment, the deportation order is invalid in law and falls to be set aside.

State v Muna Mkwana: Case No. 97/2025

90. The accused was charged with a contravention of section 49(1)(a) of the Act and was sentenced to six months direct imprisonment in terms of section 276(1) of the CPA. In my view, the conviction and sentence are in accordance with justice. Under sentence, the court also ordered: “**ANCILLARY ORDER: THE ACCUSED’S DEPORTATION IS ORDERED IN TERMS OF THE IMMIGRATION ACT 13/2002 AFTER SERVING THE IMPRISONMENT IMPOSED**”. The deportation order is also recorded on the same template as in the other matters, save that the word “*Ancillary*” has been inserted by hand.
91. For the reasons articulated in this judgment, the deportation order is invalid in law and falls to be set aside.

The State v Francis Samba: Case No. 89/2025

92. The accused was charged with a contravention of section 4(a) and (b) of Act 140 of 1992 and a contravention of section 49(1)(a) of the Act. The accused pleaded guilty and was convicted and sentenced to a fine of R1 000.00 or thirty days imprisonment in relation to the drugs offence and twelve months' imprisonment in respect of the immigration offence. In my view, these convictions and sentences are in accordance with justice. At the end of the proceedings the presiding magistrate ordered: “*The accused must also be further detained for the purposes of deportation in terms of section 34(1), (5) and (8) – Act 13/2002.*” The deportation order appears on the same template as in the other cases.

93. For the reasons articulated in this judgment, the deportation order is invalid in law and falls to be set aside.

The State v Gie Kome (Zinga Alberto): Case No: 29/2026

94. The accused was charged with a contravention of section 4(b) of Act 140 of 1992, and a contravention of section 49(1)(a) of the Act. Upon conviction after a plea of guilty he was sentenced to a fine of R1 000.00 or thirty days imprisonment in respect of count 1 and to a fine of R3 000.00 or ninety days imprisonment in respect of count 2, the immigration offence. In my view, these convictions and sentences are in accordance with justice. The deportation order appears on the same template as in the other cases.

95. For the reasons articulated in this judgment, the deportation order is invalid in law and falls to be set aside.

The State v Tajul Islam: Case No. 176/2026

96. The accused was charged with a single count of contravening the Act inasmuch as he was alleged to have entered and remained in or departed from the Republic in contravention of the Act. The annexure to the charge sheet indicates that the allegation against the accused was that he remained in the country after his visa had expired. The record of proceedings indicates that the accused was represented, that he pleaded guilty in terms of section 112 of the CPA, and handed in a statement in terms of section 212 thereof. It appears that, following conviction, the accused was questioned by the presiding magistrate, who also elected to call an immigration officer, Mr Lofuna, to give evidence. The evidence of Mr Lofuna appears at bundle pages 356 to 368. From the questions posed by him to Mr Lofuna, the presiding magistrate was

concerned that the accused might re-offend and be able to avoid detection and apprehension for the purposes of deportation after he had paid a fine. Mr Lofuna testified that, whether a fine was paid at court or at prison, officials of the Department of Home Affairs would be able to detain the accused in terms of section 34(1) and thereafter attend to his deportation. The presiding magistrate, Mr E J McCullum, imposed the following sentence, recorded in a “SENTENCE ANNEXURE” signed by him:

“The accused is sentenced as follows:

1. The accused is sentenced to twelve (12) months imprisonment, wholly suspended for a period of three (3) years on the following conditions:
 - 1.1 That the accused is not convicted of contravening Section 49(1)(a) of the Immigration Act, 13 of 2002 committed during the period of suspension;
 - 1.2 That the accused shall surrender himself immediately after the conclusion of these criminal proceedings to Mr. Funo (sic), the immigration officer present in court, to enable the Department of Home Affairs to act in terms of section 34(1) [of] the said Act, as constitutionally qualified by the Constitutional Court, in *Ex parte Lawyers of Human Rights v Minister of Home Affairs*, 2023, judgment.”

97. The Senior Magistrate, Kuils River, submitted the matter to this Court for review, referencing section 49(1)(a) of the Act and that “*The Magistrate is of the view that it is not necessary to make a Deportation Order.*” In my view, for the reasons articulated above, Magistrate McCullum was correct in declining to make a deportation order. His detailed reasons were of assistance to this court. The aspect of the conditions of suspension of sentence is considered in the next section.

The conditions of suspension of sentence in case number 176/2026

98. This aspect is dealt with under a separate heading because it raises a discrete issue.

99. The sentence in case number 176/2026 is quoted in full in paragraph 96 above.

100. The Minister of Home Affairs and the Minister of Correctional Services (“**the Ministers**”) argued that in case number 176/2026 the court erred in imposing the second condition. Their argument may be summarised as follows: Section 297 of the CPA provides for a suspended sentence, as also for the conditions on which a sentence may be suspended. In summary, such conditions are directed either at compensating the victim of the offence, providing a benefit or service, to the victim or the wider community, submitting to correctional supervision or some other form of instruction or treatment, or to the accused’s future good conduct. The Ministers submitted, in the present case, that the second condition imposed for the suspension of the sentence of imprisonment, that the accused surrender himself for purposes of being processed in terms of section 34(1) of the Act, is not a condition as contemplated in section 297. They argued that it has none of the features of a condition for purposes of the suspension of a period of imprisonment, and is, as expressly acknowledged by the magistrate, intended to facilitate an entirely different purpose, the deportation of the accused. It was also argued that the word ‘surrender’ was inappropriate or at least not clear. As such, it was submitted that it is not a lawful or appropriate condition, and that it would not be in accordance with justice for it to be confirmed by this court.

101. In oral argument, it was contended on behalf of the Ministers that the first condition is inappropriate because it involves a continuing offence.

Conditions in terms of section 297 of the CPA

102. Section 297(1)(b) of the CPA empowers a sentencing court, after convicting an accused, to pass sentence but suspend the operation of the whole or any part of that sentence for a period not exceeding five years on any condition referred to in section 297(1)(a)(i) of the CPA.
103. Section 297(1)(a)(i) of the CPA contains a number of specified conditions, including compensation, community service, treatment, supervision, attendance or residence at a specified centre, good conduct and “*any other matter*” under section 297(1)(a)(i)(hh) of the CPA.
104. The starting point in the consideration of this aspect is that section 297 allows for a condition dealing with “*any other matter*”. The significance of this terminology includes: (1) the legislature did not confine conditions to suspended sentences to the specific examples listed in sub-paragraphs (aa) to (gg); and (2) it is of very wide ambit. The other possible conditions in the section are not applicable.

The principles applicable to conditions

105. The leading case on the topic of conditions (relied on by the Ministers) is R v Cloete 1950 (4) SA 191 (E) in which the court held as follows at 192F-G:

“While the words of sec. 360 (b) of Act 31 of 1917¹¹ are wide and the discretion of the judicial officer should not be lightly interfered with, it does seem that two principles at least should be observed in the imposition of the conditions. The first is that the condition imposed should bear at least some relationship to the circumstances of the crime which is being punished by the imposition of the suspended sentence. It need not be closely related but should be related to it in some degree at least, even though slightly related, and not divorced from it, or remote from it. The second is that the condition be stated with such precision that the convicted person may understand the ambit of the condition.”

¹¹ A precursor of section 297 of the CPA

106. This was approved in this division in S v Benn; Sv Jordaan; S v Gabriels 2004 (2) SACR 156 (C) at 160h-l, at which it was also held that there is a third condition, namely that the condition is reasonable. See also S v Martin 2022 (1) SACR 421 (WCC) at paragraphs 11 to 15 at which the three requirements were reiterated. In paragraph 15 of Martin, it was held, in relation to the first principle in Cloete, that *"It should be emphasised that any condition imposed by the sentencing court must bear at least some relationship to the circumstances of the crime which is being punished by the imposition of the suspended sentence."*

107. The question, then, is whether the conditions satisfies the requirement as articulated in Cloete: *"It need not be closely related but should be related to it in some degree at least, even though slightly related, and not divorced from it, or remote from it."* And as in Martin quoted above.

Whether the conditions in question are competent

108. Mr Jamie submitted that using a statutory power for some purpose other than that for which alone it has been given is an act *contra legem*, and referred the court to Minister of Justice and Constitutional Development and Another v South African Restructuring and Insolvency Practitioners Association and Others 2017 (3) SA 95 (SCA) at paragraphs 64 and 65:

"[64] There is a fundamental principle that must be observed in this regard. It was summarised in *Gauteng Gambling Board* where Navsa JA, speaking for a unanimous court said:

'More than six decades ago this court in *Van Eck NO and Van Rensburg NO v Etna Stores 1947 (2) SA 984 (A)* said the following:

"For to profess to make use of a power which has been given by statute for one purpose only, while in fact using it for a different purpose, is to act *in fraudem legis*, construing that term in the more restricted manner adopted by the majority of this Court in the case of *Dadoo Ltd v Krugersdorp Municipal Council (1920 AD 530)*. . . Such a use is a mere *simulatio* or pretext. . . . And

I should add that, of course, if the person exercising the power avowedly uses it for some purpose other than that for which alone it has been given, he acts simply *contra legem*: where, however, he professes to use it for its legitimate purpose, while in fact using it for another, he acts *in fraudem legis*.”

In present-day jurisprudence acting with an ulterior motive or purpose is subsumed under the principle of legality.’

[65] In my opinion it is precisely that type of breach of the principle of legality that has occurred here. In their legitimate desire to address past discrimination and disadvantage, the Minister and the Chief Master have overlooked the fundamental purpose of the legislation that governs the sequestration of estates and the winding-up of companies and close corporations, which is to serve the interests of creditors as conceived by the creditors themselves. The policy that has been promulgated is not directed at that purpose and disavows the need for the process of appointment that it governs to have regard to the views or interests of creditors. That is an exercise of power for a purpose other than any for which it was bestowed. It should not be difficult for the Minister and the Chief Master to devise a policy that serves both purposes instead of trying to serve one at the expense of the other.”

109. The conviction was for contravening section 49(1)(a) of the Act, on the basis that the accused was in the country in contravention of the Act. The second condition imposed was that the accused surrender himself to an immigration officer to enable the Department of Home Affairs to act in terms of section 34(1) of the Act. The condition did not amount to the criminal court exercising an administrative deportation function. On the contrary, its import was for the accused to submit to the lawful administrative process contemplated by the Act, the outcome of which remained to be determined by the immigration authorities to determine. The Magistrate recorded in his judgment: “... *But there is always a possibility that you will slip through the net. And to a certain extent, this Court is bound by its duties to uphold the rule of law, and the Court cannot impose a sentence which will allow you to go free to commit, or to continue the commission of the contravention of section 49(1)(a) of the Immigration Act.*”

110. The accused, as an illegal foreigner, must be dealt with in terms of section 32(2) and 34 of the Act insofar as deportation is concerned. Having received a suspended sentence for his conviction in terms of section 49(1)(a) of the Act, he would not be imprisoned and therefore not be in detention from which the question of his deportation could be dealt with by an immigration officer, as contemplated in section 34(6). The accused being an illegal foreigner present in the country, and the conviction having been for that, reporting to an immigration officer, as he was obliged to do is, in my view, to a high degree, and directly, related to the offence of which he was convicted. Should the accused not comply with the condition and remain in the country, he would again be committing the offence in terms of section 49(1)(a) of the Act. The condition accordingly serves to prevent the offence being repeated. There are therefore, in my view, two aspects of the condition related to the offence directly and to a high degree.

111. In principle, there is no impediment to such a condition.

112. Mr Jamie contended in regard to the formulation of the conditions ordered:

112.1. There is an element of irrationality in the first condition because of the continuing nature of the offence. This submission appears to have some merit. It can be addressed by affording the accused time within which to regulate his status and thereafter the condition shall apply.

112.2. The word '*surrender*' implied some form of forced detention and the reference to enabling the Department of Home Affairs to act in terms of section 34(1) could be interpreted as a form of disguised deportation order or an instruction to the Department as to what to do. These aspects are dealt with below.

113. I do not agree with the contention that the word '*surrender*' implies some form of forced detention. I read it as being intended to mean that the accused must present himself to an immigration officer. Detention would be up to the immigration officer acting in terms of section 34(1) of the Act – the question of detention being precisely part of what the immigration officer will be required to consider in the exercise of a discretion in terms of section 34(1) of the Act referred to in the second condition. I do, however, detect some force in Mr Jamie's argument to the extent that the meaning and import of '*surrender*' may be confusing and that a more neutral (and, perhaps, less emotive or dramatic) word or phrase such as '*report*' or '*present himself*' would be more suitable and remove any possible uncertainty, in order to comply with the requirements in Cloete, read with Benn and Martin.

114. As to the reference to enabling the Department of Home Affairs to act in terms of section 34(1) possibly being interpreted as a form of disguised deportation order, or an instruction to the Department as to what to do, I do not think that this would be use of a statutory power (sentencing in a criminal matter) for some purpose other than that for which alone it has been given and an act *contra legem* (Minister of Justice). Any uncertainty can be addressed by means of a reformulation. In any event, the conditions were not for this purpose alone, and were for another purpose, as dealt with above.

115. Both of the above aspects can be addressed by a reformulation. I am satisfied that the conditions be set aside and reformulated as follows (for convenience of presentation the sentence is included):

"The accused is sentenced to twelve (12) months imprisonment, wholly suspended for a period of three (3) years on condition that:

1. The accused is not convicted of contravening section 49(1)(a) of the Immigration Act 13 of 2002 which is committed 30 days after the date of this order and during the period of suspension.
2. Within 30 days of this order, the accused shall report to the nearest office of the Department of Home Affairs (and he shall retain written proof of having done so), in order for his presence in South Africa to be dealt with in accordance with the law.

116. In all the circumstances, I conclude that the condition, as reformulated, has a direct and rational connection to both the offence and the circumstances giving rise to the conviction and is more than, but at least, slightly related to the crime for which the accused was convicted, thus satisfying the test in Cloete.

117. In my view, therefore, this court ought to replace the conditions ordered under case number to read as reformulated above.

118. Two final observations on this topic:

118.1. It is to be borne in mind that sentences and conditions in regard thereto are fact and circumstance specific. The above reformulation has been prepared specific to this one case (176/2026). It is not to be used blindly as a template by presiding officers without regard to the specific facts and circumstances of the matters before them and in sentencing proceedings the presiding officers should take account thereof in crafting any appropriate condition(s).

118.2. When an accused is charged with an offence under section 49 of the Act, it would be appropriate for presiding officers, if necessary in the circumstances, during the sentencing proceedings, to inform an unrepresented accused that a possible sentence in respect of the charge could include condition(s) of the above nature.

Invitation from the State to refer to Parliament

119. In its heads of argument, the State submits that should this court “... *find that the Act does not confer such a power on a criminal court, the State respectfully submits that the Court ought to draw that apparent lacuna to the attention of Parliament for consideration.*” The Minister of Home Affairs and the Minister of Justice and Constitutional Development both participated in the hearing of this matter and in making written submissions. They are in a position to take any steps they consider appropriate in this regard.

Conclusion and orders

120. In each of the matters, I am of the view that:

- 120.1. The convictions appear to be in accordance with justice, and may be confirmed.
- 120.2. This court should set aside the deportation orders as being not in accordance with justice, besides in case number 176/2026 in which no such order was made.
- 120.3. The remaining parts of the sentences appear to be in accordance with justice, and may be confirmed.

121. In the premise, I propose that it be ordered as follows:

121.1. In **THE STATE v IBRAHIM HASHIM (KINYO), Case No: 92/2025:**

- 121.1.1. The deportation order made is set aside.
- 121.1.2. The convictions and sentences are otherwise confirmed.

121.2. In **THE STATE v PRINCE MBANZA, Case No: 30/2026:**

- 121.2.1. The deportation order made is set aside.
- 121.2.2. The convictions and sentences are otherwise confirmed.

121.3. In **THE STATE v MUNA MKWANA, Case No: 97/2025:**

121.3.1. The deportation order made is set aside.

121.3.2. The convictions and sentences are otherwise confirmed.

121.4. In **THE STATE v FRANCIS SAMBA, Case No: 89/2025:**

121.4.1. The deportation order made is set aside.

121.4.2. The order that *“The accused must also be further detained for the purposes of deportation in terms of section 34(1), (5) and (8) – Act 13/2002.”* is set aside.

121.4.3. The convictions and sentences are otherwise confirmed.

121.5. In **THE STATE v GIE KOME (ZINGA ALBERTO), Case No: 29/2026:**

121.5.1. The deportation order made is set aside.

121.5.2. The convictions and sentences are otherwise confirmed.

121.6. In **THE STATE v TAJUL ISLAM, Case No: 176/2026:**

121.6.1. The conditions to the sentence are set aside and reformulated, with the sentence to read as follows:

“The accused is sentenced to twelve (12) months imprisonment, wholly suspended for a period of three (3) years on condition that:

1. The accused is not convicted of contravening section 49(1)(a) of the Immigration Act 13 of 2002 which is committed 30 days after the date of this order and during the period of suspension.
2. Within 30 days of this order, the accused shall report to the nearest office of the Department of Home Affairs (and he shall retain written proof of having done so), in order for his presence in South Africa to be dealt with in accordance with the law.

121.6.2. The convictions and sentences are otherwise confirmed.

A Kantor
Acting Judge of the High Court

I agree, and it is so ordered:

R Henney
Judge of the High Court

I agree:

H Slingers
Judge of the High Court