

IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Review No. : 42/2014

In the review between:-

THE STATE

versus

LETONYANA MOTLOI
MATASE MOTJOKOSELI

CORAM: VAN ZYL, J *et* REINDERS, AJ

JUDGEMENT BY: VAN ZYL, J

DELIVERED ON: 28 FEBRUARY 2014

- [1] This is a special review in accordance with the provisions of section 304A of the Criminal Procedure Act, 51 of 1977.
- [2] The presiding magistrate, C.M. Mokgotho, set out the relevant facts in a clearly written, detailed letter addressed to the Registrar of this Court. I therefore deem it apposite to quote the contents of the said letter:

"The two accused appeared before court on two counts. They were legally represented by Mr Mokoena from Justice Centre: Ladybrand.

The charges against the two accused were as follows:

Count 1: Corruption – giving a benefit in contravention of the provisions of Section 1(1)(a) read with Section 3 of the Corruption Act 94 of 1992.

Count 2: Illegal Foreigner in contravention of the Immigration Act 13 of 2002 as amended by Section 45(1)(a) of Act 19 of 2004.

I took the pleas of both accused in respect of both charges preferred by the State.

Mr Mokoena who represented both accused tendered a written statement in terms of Section 112(2) of Act 51 of 1977 on all the charges preferred by the State.

I convicted both accused on both counts in accordance with their pleas.

I did not impose any sentence to both accused and the matter was remanded for sentence.

The conviction on count two (2) is in order.

The irregularity I committed was that as I was researching for appropriate punishment, it came to my notice that the Statutory Provision that the Prosecution used or referred to on count one was from the Act that was repealed in its totality.

Therefore, the conviction of both accused on count No. 1 is incorrect and should be set aside.


Furthermore, as count 2 is closely linked to count 1, it may also be set aside.

May the matter be remitted back to Court for both accused to be re-charged *de novo* before another judicial officer.

In Count 1, the accused should have been charged in Contravention of Section 21 read with Section 26 of Act 12 of 2004 (Prevention and Combating of Corrupt Activities, Act No. 12 of 2004)." (sic)

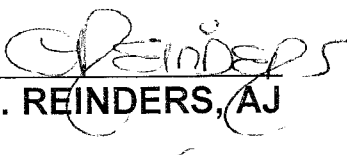
- [3] I agree that the conviction on count 2, being a conviction in terms of an Act which has been repealed, indeed constitutes an irregularity and should be set aside.
- [4] From my reading of the details pertaining to the two counts, it is evident that the said counts are in fact closely linked as stated by the presiding magistrate. If the convictions on count 1 are not set aside and count 2 is to be dealt with by a different, newly constituted Court, it will have the consequential result that should the two accused be convicted on count 1 as well, two separate sentences on the respective charges will be imposed by the two different Courts. This will probably result in an injustice towards the two accused. I consequently agree with the presiding magistrate that it will be in accordance with justice for the convictions on count 2 to also be set aside.
- [5] I therefore make the following order:
1. The convictions of both accused on charge 1 and charge 2, are set aside.

2. The matter is referred back to the court *a quo* for both accused to be recharged and to be prosecuted *de novo* before a different presiding magistrate.



C. VAN ZYL, J

I concur.



C. REINDERS, AJ

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