

REPUBLIC OF SOUTH AFRICA



A223/14

IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)

(1)	REPORTABLE: YES / <u>NO</u>
(2)	OF INTEREST TO OTHER JUDGES: YES / <u>NO</u>
(3)	REVISED.
<u>25/3/2014</u>	
DATE	<u>D Molefe</u> SIGNATURE

High Court Reference No: 251/14  
Magistrate's Serial No: 2/14  
Magistrate's Case No: L955/13

28/3/2014

In the matter between:

THE STATE

And

ISAAC MALENZA

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**REVIEW JUDGMENT**

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**MOLEFE J:**

[1] This is a special review which came before this court in terms of section 304(4) of the Criminal Procedure Act 51 of 1977 ("the CPA").

In this matter the accused was found guilty of contravention of section 49 (1) (a) read with section 9 (3) (a) of the Immigration Act, Act 13 of 2002 and was sentenced to a: *“Fine of 40 days imprisonment, a further 50 days suspended for five years on condition that you are not charged guilty of contravening section 49 (1) (A), Act 13 of 2002 during your time of suspension”.*

The accused was legally represented during the trial.

[2] The Acting Senior Magistrate, Ms A. Du Preez, sent the matter on special review under a cover of a letter dated 11 February 2014 which read as follows:

*“Met die oorhoofse nagaan van die betrokke saak om judisiele kwaliteitsbeheer uit te oefen is gemerk dat die saak in terme van artikel 112(1) (a) Wet 51/1977, afgehandel is.*

*Die betrokke landdros het egter direkte gevangenisstraf opgelê. In die lig van die bepalings van artikel 112(1) (a) is die vonnis derhalve onreëlmatig.*

*Daar is vasgestel dat die betrokke beskuldigde steeds in die gevangenis is en is hy deur die klerk van die straffhof gerekwiseer vir verskyning op 13 February 2014.*

*U word derhalwe respektvol versoek om die opgelegde vonnis tersyde te stel en na die landdros terug te verwys vir die oorweging van 'n gepaste vonnis”.*

[3] Section 112 (1) (a) of the CPA reads as follows:

*“(1) Where an accused at a summary trial in any court pleads guilty to the offence charged, or to an offence of which he may be convicted on the charge and the prosecutor accepts that plea –*

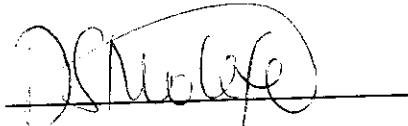
*a) The presiding judge, regional magistrate or magistrate may, if he or she is of the opinion that the offence does not merit punishment of imprisonment or any other form of detention without the option of a fine or of a fine exceeding the amount determined in the Gazette, convict the accused in respect of the offence to which he or she has pleaded guilty on his or her plea of guilty only and –*

*i) Impose any competent sentence, other than imprisonment or any other form of detention without the option of a fine or a fine exceeding the amount determined by the Minister from time to time by notice in the Gazette; or*

*ii) Deal with the accused otherwise in accordance with law;”*

[4] The magistrate, Ms Du Preez correctly pointed out that the sentence imposed is not competent as the fine is not in an amount of money in accordance with section 112 (1) (a). I agree with Ms Du Preez’s submission.

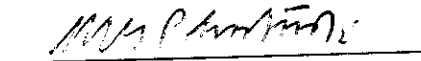
[5] In the circumstances, the accused’s sentence is set aside and the matter is referred back to the court *a quo* for the magistrate to impose a competent sentence in compliance with section 112 (1) (a).

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D. S. MOLEFE

JUDGE OF THE HIGH COURT

I agree.

A handwritten signature in black ink, appearing to read 'M.G. Phatudi', written over a horizontal line.

M.G. PHATUDI

ACTING JUDGE OF THE HIGH COURT