

CASE NO.: CR 7/2011

CASE NO.: CR 8/2011

CASE NO.: CR 9/2011

CASE NO.: CR 10/2011

IN THE HIGH COURT OF NAMIBIA

In the matter between:

1. THE STATE vs MAFA SIMBA

CASE NO.: A 137/2010

HIGH COURT REF. NO.: 236/2010

MAGISTRATE'S SERIAL NO.: 56/2010

2. THE STATE vs BANGURA JACOB

CASE NO.: A 138/2010

HIGH COURT REF. NO.: 235/2010

MAGISTRATE'S SERIAL NO.: 55/2010

3. THE STATE vs VUSHE ARTHUR AMBROSE

CASE NO.: A 153/2010

HIGH COURT REF. NO.: 243/2010

MAGISTRATE'S SERIAL NO.: 62/2010

4. THE STATE vs RUZVIDZO GLADYS

CASE NO.: A 137/2010

HIGH COURT REF. NO.: 242/2010

MAGISTRATE'S SERIAL NO.: 60/2010

CORAM: SHIVUTE, J et SIMPSON, AJ

Delivered on: 2011.02.10

REVIEW JUDGMENT

SHIVUTE, J: [1] All the above mentioned matters appeared before the same magistrate who was sitting at Magistrate's Court Windhoek. All accused persons in all this cases were charged with the offence of remaining in Namibia after expiration of visitors' entry permit contravening section 29 (5) of Act 7 of 1993. They were all convicted as charged.

[2] I am satisfied with the conviction and sentence. However, the magistrate declared all accused persons as prohibited immigrants and ordered them to leave the country within 48 hours.

[3] I directed the following query to the learned magistrate.

"Does the court have the power to declare the accused a prohibited immigrant and order

him/her to leave Namibia within 48 hours?"

[4] The learned magistrate responded to the query in the following terms.

"The answer is "no". After having perused Act, (Immigration Control Act 7 of 1993) I realized that the court is not authorized to order the accused as a prohibited immigrant and order his leaving the country within 48 hours. The Act refers to the Immigration tribunal that is empowered to do so in certain circumstances. I do concede I misconstrued the provisions of Part VI of the said Act. It follows that the order be dropped and that the conviction and sentence ought to stand and be confirmed."

[5] The learned magistrate conceded correctly that Act 7 of 1993 does not empower the court to declare the offender as a prohibited immigrant and order him/her to leave the country within 48 hours and I do agree with him.

[6] In view of the concessions made, the following order is made.

- 1) The conviction and sentence imposed in respect of each accused in the above mentioned matters is confirmed.
- 2) The order declaring each accused as a prohibited immigrant ordering him/her to leave Namibia within 48 hours in respect of each matter is set aside.

SHIVUTE, J

I agree.

SIMPSON, AJ