

REPUBLIC OF NAMIBIA

HIGH COURT OF
WINDHOEK
REVIEW JUDGMENT



NAMIBIA MAIN DIVISION,

Case Title: The State v Andrew Muzamu	e No: 131/2022
	Division of Court: Main Division
Heard before: Hon. Judge Shivute <i>et</i> Hon. Judge January	Delivered on: 30 November 2022
Neutral citation: <i>S v Muzamu</i> (CR 131/2022) [2022] NAHCMD 648 (30 November 2022)	
The order: i. The conviction is confirmed. ii. The sentence is confirmed, but part of the sentence declaring the accused a prohibited immigrant is set aside.	
Reasons for order:	
SHIVUTE J (JANUARY J concurring): [1] This is a review matter in terms of section 302(1) of the Criminal Procedure Act 51 of 1977, as amended (the CPA). [2] The accused appeared in the district court of Keetmanshoop on two charges. Count 1- contravening section 29(1) read with sections 1 and 8 of the Immigration Control Act 7 of 1993, in other words, remaining in Namibia after expiration of visitor's entry	

permit.

Count 2- contravening section 2(b) read with sections 1, 2(1) and/ or 2(iv), 7,8,10, 14 and Part I of the Schedule of Act 41 of 1971, as amended- possession of dependence producing substance.

[3] Accused pleaded guilty on both counts. The court applied section 112(1)(b) of the CPA and he was convicted as charged. He was sentenced as follows:

(a) Count 1- fined N\$ 6000 or in default of payment 24 months' imprisonment.

(b) Count 2- sentenced to 18 months' imprisonment.

(c) In terms of section 35 of the Criminal Procedure Act 51 of 1977, the 560 grams of cannabis is forfeited to the State.

(d) In terms of section 29(5) of the Immigration Control Act 7 of 1993, as amended, accused is declared a prohibited immigrant.

[4] A query was written to the magistrate to enquire why the accused was declared a prohibited immigrant and whether the magistrate has power to declare the accused a prohibited immigrant.

[5] The magistrate conceded that she was not supposed to declare the accused a prohibited immigrant and suggested that the review court set aside the section 29 declaration.

[6] It must be noted that the Immigration Control Act does not give magistrates power or authority to declare accused persons prohibited immigrants thus part of the sentence that declares the accused a prohibited immigrant is wrong and must be set aside.

[7] In the result, it is ordered:

i. The conviction is confirmed.

ii. The sentence is confirmed, but part of the sentence declaring the accused a prohibited immigrant is set aside.

N N SHIVUTE

H C JANUARY

Judge	Judge
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