

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION, OSHAKATI

REVIEW JUDGMENT

<p><b>Case Title:</b> <i>The State v Jeremia Hitumakanifa Tulinyane and Remisio Fiyopeni Hingasihangwa</i></p>	<p><b>CR No.:</b> 13/2020 Case No.: B109/2019</p>
<p><b>Heard before:</b> Honourable Mr Justice January J et Honourable Mrs Justice Salionga J</p>	<p><b>Division of Court:</b> Northern Local Division</p>
<p><b>Neutral citation:</b> <i>S v Tulinyane</i> (CR 13/2020) [2020] NAHCNLD 21 (10 February 2020)</p>	
<p><b>The order:</b></p> <ol style="list-style-type: none"><li>1. The conviction and sentence of contravening section 34 (1) of Act 7 of 1993 (the Act) are set aside in relation of both accused.</li></ol>	
<p><b>Reasons for the order:</b></p>	

JANUARY J (SALIONGA J concurring):

[1] This court has on numerous occasions in the past directed that section 112 (1) (a) of the Criminal Procedure Act, Act 51 of 1977 (the CPA is intended for trivial or minor offences.

[2] Section 34(1) does not constitute an offence but obligations on persons entering Namibia. Section 34(3) of the Act provides for the offence(s).

[3] This court has expressed itself in the past that a contravention of section 34 (3) of The Immigration Control Act, Act 7 of 1993 is not a trivial offence.<sup>1</sup>

‘(3) Any person referred to in subsection (1) who fails to comply with the provisions of that subsection or any person referred to in subsection (2) who fails to comply with the provisions of the last-mentioned subsection or any person, so referred to, who fails, on being called upon to do so by an immigration officer, then and there to furnish to such immigration officer the particulars determined by the Chief of Immigration to enable the board, the Chief of Immigration or such immigration officer, as the case may be, to consider the issuing to the said person of a permit concerned, shall be guilty of an offence and on conviction be liable to a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment, and may be dealt with under Part VI as a prohibited immigrant.’

[4] The case record is in shambles. It appears that both accused firstly appeared in Grootfontein magistrates court where they were charged with a contravention of section 12(10) (sic) read with subsection 4 as per the Republic of Namibia Immigration laws (sic). Being in Namibia without a valid visitors permit in contravention 12(1) of the Act. No date and place of the offence reflects in this charge.

[5] The case was thereafter transferred to Eenhana where the charge was still a contravention of section 12(1) of the Act. The record surprisingly reflects a further charge of contravening section 34(1) read with section 34(3) of the Act.

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<sup>1</sup> See *S v Kaviyu and others* NAHCNLD 78 (23 August 2016)

[6] The record merely reflects a plea of guilty disposed of in terms of section 112(1) (a) of the CPA.

[7] It is therefore uncertain to which charge the accused pleaded. Therefore I cannot certify the proceedings to be in accordance of justice.

H C JANUARY JUDGE	J T SALIONGA JUDGE