

REPUBLIC OF NAMIBIA



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

REVIEW JUDGMENT

| | |
|---|--|
| Case Title: <i>The State v Daniel Alex</i> | CR No.: 14/2020 Case No.: B127/2018 |
| | Division of Court: Northern Local Division |
| Heard before: Honourable Mr Justice January J et Honourable Mrs Justice Salionga J | Delivered on: 10 February 2020 |
| Neutral citation: <i>S v Alex</i> (CR 14/2020) [2020] NAHCNLD 23 (10 February 2020) | |
| The order: 1. The conviction and sentence of contravening section 34 (1) of Act 7 of 1993 (the Act) are set aside. | |
| Reasons for the order: | |
| 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.

[3] Section 34 of the Act provides for the offence(s);

‘(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. The 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.’¹

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

| | |
|----------------------|-----------------------|
| | |
| H C JANUARY JUDGE | J T SALIONGA JUDGE |

¹ See *S v Kaviyu and others* NAHCNLD 78 (23 August 2016)