



CASE NO.: CR 12/2011

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

ISSA AWONGA KASONIKA

[HIGH COURT REVIEW CASE NO.: 216/2011] CORAM:

NDAUENDAPO, J et SIBOLEKA, J

Delivered on: 2011 FEBRUARY 16

REVIEW JUDGMENT

SIBOLEKA, J.:

[1] The 26 year old accused appeared before the Magistrate at Noordoewer on a charge of contravening section 12(1) of the Immigration Control Act, Act no. 7 of 1993, was questioned in terms of section 112(1)(b) of Act 51/77 convicted, and sentenced accordingly.

[2] The relevant section reads:

"12. (1) Any person seeking to enter Namibia who fails on demand by immigration officer to produce to such immigration officer an unexpired passport which bears a valid visa or an endorsement by a person authorized thereto by the Government of Namibia to the effect that authority to proceed to Namibia for the purpose of being examined under this Act has been granted by the Minister or an officer authorized thereto by the Minister, or such person is accompanied by a document containing a statement to that effect together with particulars of such passport, shall be refused to enter and to be in Namibia, unless such person is proved to be a Namibian citizen or a person domiciled in Namibia."

my own underlining.

[3] The charge sheet reads:

"S v ISSA AWANGA KASONIKA

N 176/10

ANNEXURE "A"

CHARGE: BEING IN NAMIBIA WITHOUT A VALID PASSPORT OR PERMIT.

That the accused is guilty of C/s 12(1) of the Immigration Control Act, 7/1993.

In that upon or about the 25 September 2010 at or near NOORDOEWER BORDER POST, KARASBURG in the district of KARASBURG the said accused did wrongfully and unlawfully remained or being in Namibia without a valid passport of permit."

From the above it is very clear that the charge sheet is defective because it omitted to include the central element of this offence being that of:

"Any person seeking to enter Namibia who fails on demand by an Immigration officer to produce to such Immigration officer an unexpired passport which bears a valid visa ..."

[4] This cardinal omission in the charge resulted in the section 112 (1)(b) questioning by the learned Magistrate not covering that important aspect as well. As a result of these shortcomings the conviction and sentence on this matter cannot be allowed to stand.

[5] I must mention that numerous Review judgments have already been written on this topic directing Magistrates countrywide to see to it that the Prosecutors adjust the wording of their charge sheets in order to cover this aspect.

[6] Magistrates are directed once more to take note of this defect in matters brought before them.

[7] In the result both conviction and sentence are set aside.

SIBOLEKA, J

I agree.

NDAUENDAPO, J