IN THE HIGH COURT OF NAMIBIA

HELD IN WINDHOEK

In the matter between:

THE STATE

And

GWAYAKWAYA ABRAHAM

(HIGH COURT REVIEW CASE NO.: 953/2011)

(MAGISTRATE'S SERIAL NO.: 15/2011)

CORAM: **PARKER, J** *et* **SHIVUTE, J**

Delivered on: 2012 June 15

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REVIEW JUDGMENT

SHIVUTE, J: [1] The accused person was convicted in the Magistrate's Court Omaruru on a charge of contravening section 29 (1) read with sections 1 and 8 of the Immigration Control Act, (Act 7 of 1993) for remaining in Namibia after expiration of visitor's entry permit.

[2]   He was sentenced to a fine of N$3000.00 or eighteen month's imprisonment which was wholly suspended on condition that accused is not convicted of contravening section 29 of Act 7 of 1993 committed during the period od suspension. I found the conviction as well as the sentence to be in order.

[3]   In addition the learned magistrate made an order for the accused to be deported within 48 hours from the date of conviction.

[4]   I directed a query to the magistrate as to which provision of the law did the court derive its authority to deport the accused?

[5]   The learned magistrate responded that in terms of section 44 (10) of the Inmmigration Control Act, (Act 7 of 1993) the removal of prohibited persons or immigrants from Namibia can be authorized by the Tribunal on application by the immigration officer. The learned magistrate conceded that he has erred by making the depotation order.

[6]   No court has authority in terms of the Immigration Control Act to order a prohibited immigrant to leave the country.   Part IV of the Immigration Control Act, grants powers to officers, persons and tribunal to deport a prohibited immigrant. The magistrate is completely excluded. In view of this the magistrate's order cannot be allowed to stand because it is impermissible.

[7]   In the result the following order is made:

(1)   The conviction and sentence are confirmed.

(2)   The order that the accused be deported from Namibia within 48 hours is set aside.

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SHIVUTE, J

I agree.

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PARKER, J