

REPUBLIC OF NAMIBIA



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

REVIEW JUDGMENT

Case Title: <i>The State v Festus Andreas</i>	Case No: CR 43/2019
	Division of Court: Northern Local Division
Heard before: Honourable Mr. Justice January J et Honourable Ms. Justice Salionga J	Delivered on: 16 December 2019
Neutral citation: <i>S v Andreas</i> (CR 43/2019) [2019] NAHCNLD 142 (16 December 2019)	
The order: <ol style="list-style-type: none">1. The conviction of contravening section 40(5) read with sections 1, 40(4) and 53(1) of Act 59 of 1972 as amended inter alia by Proclamation AG 15 of 1989 – Entry into Namibia without a valid passport is set aside and substituted with a contravention of section 12(1) of Act 7 of 1993 – Entry into Namibia in contravention of the Immigration Control Act.2. The sentence of N\$3000 or 12 months imprisonment is confirmed.	
Reasons for order:	
JANUARY J (SALIONGA J concurring): <ol style="list-style-type: none">1. The accused was charged wrongly in contravening a section of a repealed Act.	

2. 'As a general rule, an accused should not be allowed to escape conviction only as a result of the prosecution's F attachment of an incorrect 'label' to a statutory offence or an erroneous reference to the applicable statutory provision which has allegedly been contravened.

“(The) principle is that, if the body of the charge is clear and unambiguous in its description of the act alleged against the accused, e.g., where the offence is a statutory and not a common-law offence and the offence is correctly described in the G actual terms of the statute, the attaching of a wrong label to the offence or an error made in quoting in the charge the statute or statutory regulation alleged to have been contravened, may be regarded as an error not fatal to the charge. Hence, in circumstances such as those, an error of that nature may be corrected on review, if the Court is satisfied that the conviction is in accordance with justice, or, on appeal, if it is satisfied that no failure of justice has, in fact, resulted H therefrom.”

(Per Henochsberg J in *R v Ngcobo; R v Sibega* 1957 (1) SA 377 (N) at 381B - D.)¹

H C JANUARY JUDGE	J T SALIONGA JUDGE

¹ *S v Somses* 1999 NR 296 (HC) at 297 F-G