IN THE SOUTH GAUTENG HIGH COURT

JOHANNESBURG

CASE NO: SS16/2010

DATE: 2011/02/21

In the matter between

STATE

and

NDEBELE M AND ANOTHER ACCUSED

J U D G M E N T

LAMONT J: The three accused faced numerous counts, they were charged with the following offences:

Count 1, during the period February 2007 to May 2008 and at or near Sasolburg in Westonaria while managing or employed by or associated with a certain enterprise they conducted or participated in the conduct of directly or indirectly advancing the enterprise's affairs through a pattern of racketeering activities as contemplated by section 2 (1) (e) of the Prevention of Organised Crime Act 121 of 1998 (hereafter POCA);

Accused 1 faced the additional count 2 alone which is a count under section 2 (1) (f) of POCA comprising the management of the enterprise.

Counts 3, 4, 5, 6 and 7 were each of theft levelled against all three accused and related in each case to a vending machine known as a credit dispensing unit. The remaining counts namely, counts 8 up to 78 287 were counts concerning theft arising out of the alleged use of the vending machinery forming the subject matter of counts 3 to 7. Those counts can conveniently be summarised and considered in respect of the activities in relation to each of the five machines. In respect of each of the five machines it is alleged that the accused used each machine to steal electricity and electricity credits. All the counts can be grouped into those two categories and be understood in that sense.

The accused elected to plead not guilty and made no statement. They however advised through their counsel that insofar as there were matters of a formal nature, that endeavours would be made during the course of the trial to reach agreement in respect of such matters. During the course of the trial, very properly, admissions were made which related to many formal issues.

The State having charged the accused under POCA was assisted in the conduct of the trial by the provisions of section 2 (2) of POCA which provides that the Court may hear evidence including evidence with regard to hearsay, similar facts or previous convictions relating to offences contemplated in Section 2 (1) that is notwithstanding that such evidence might otherwise be inadmissible providing that

admitting such evidence would not render the trial unfair.

The definition of a pattern of racketeering activity is to be found in POCA as meaning the planned, ongoing, continuous or repeated participation or involvement in any offence referred to in schedule 1 and includes at least two offences referred to in schedule 1 of which one of the offences occurred after the commencement of this Act and the last offence occurred within 10 years [excluding any period of imprisonment] after the commission of such prior offence referred to in schedule 1.

An unlawful activity is defined by POCA as meaning any conduct which constitutes a crime or which contravenes any law whether such conduct occurred before or after the commencement of this Act and whether such conduct occurred in the Republic or elsewhere and for the purposes of POCA a person would have knowledge of any fact, if he had actual knowledge of the fact or if the Court is satisfied that the person believes that there is a reasonable possibility of the existence of that fact and failed to obtain information to confirm the existence of that fact.

POCA further provides that a person ought reasonably have known or suspected the existence of a fact if the conclusions that he or she ought to have reached are those which would have been reached by reasonably diligent and vigilant having both:

a) The general knowledge, skill, training and experience that may possibly expected of a person in his or her position and;
b) The general knowledge, skill, training and experience that he or she in fact has.

During the course of the trial the State sought to advance evidence in the form of previous convictions. I declined to accept that evidence and ruled accordingly. I ruled that in the context of this case it was unfair that such evidence be adduced against the accused in question.

At the commencement of the trial an application was brought to quash some of the charges based on a contention that electricity was not capable of theft. The charges in question were those which related to the manipulation of the vending machines so as to result in theft of electricity. The application was dependent upon the finding at that stage that electricity could not be stolen and that electricity had the physical properties contemplated in *S v Mintoor* 1996 (1) SACR 514 (C) which held that electricity could not be stolen.

The submissions made by the State were firstly that the factual finding in *Mintoor* was incorrect and that the evidence which would be led before me would establish that. Hence so it was submitted, I would be free not to follow *Mintoor*. Secondly it was that I should develop the common law as contemplated by section 39 of the Constitution.

It appeared to me that inasmuch as a quashing is in the nature of an exception that if the facts founding the exception were in dispute that it was proper to allow those facts to be led during the course of the trial and make a decision at the end of the trial. This would enable me to decide whether the factual basis of *Mintoor's* case was different to the factual basis before me. Patently at this stage of quashing I could not consider the question of development of the common law. I also

considered that if the common law did not as currently formulated provide that theft of electricity was a crime and I extended it to find that theft of electricity is a crime that this might result in me creating a new offence. This new offence may have come into being after the accused had performed the acts complained of.

It appeared to me that there was a more than slight possibility (which would be more conveniently decided at the end of the case) that electricity was in fact capable of theft and that the law had already been advanced by judgments relating in particular to theft of *incorporeals.*

In order to more easily understand the case and the charges which underpin the evidence it is necessary to consider the nature of the enterprise undertaken by Eskom and the nature of the enterprise undertaken by whomsoever the persons were who had control and possession of the vending machines in question.

Eskom concludes contracts with vendors under and in terms of which it supplies vending machines to those vendors. These vending machines are known as Credit Dispensing Units. The vending machines can print vouchers which are used by customers to obtain a supply of electricity equal to the value of the voucher.

There are two types of vending machines which Eskom supplies. There is a type of machine where vouchers can be printed to an unlimited value. The only control that there is over the ability of the machine to print vouchers is that once a certain number of vouchers has been reached the machine will no longer print vouchers. There is a difficultly with these machines in that the voucher counter can be

tampered with so as to prevent the machine ever reaching the printed number of vouchers which would limit its ability to print further vouchers. The other type of vending machine is a type where the total value of the vouchers which can be printed is limited by Eskom to the extent of the credit Eskom has received from the vendor (a prepaid machine). Currently the prepaid type of machine is the one which is more popularly provided.

The economic difference between the two types of vending machines is immediately apparent. In the one type of machine Eskom extends credit to the vendor and has no effective control over the total value of vouchers which can be issued by the machine. In the other there is a credit control placed by Eskom on the total value of vouchers which can be issued in that the total value is limited to an amount equal to the credit in the possession of Eskom. Eskom placed what it believed to be effective controls over the use of the machines by requiring the vendors using the machines to provide information reflecting the usage. Vendors were required to communicate information to the central database of Eskom. This communication would take place either electronically by remote access or physically by way of an Eskom representative obtaining the information from the machine in question and downloading it onto the Eskom central database.

Through this mechanism Eskom would at the intervals determined by it be kept fully aware of the extent to which each vending machine had issued vouchers, what the total and individual value of those vouchers were, what amount was due to it, and other data

pertaining to the issue of vouchers. Each of these vending machines retains extensive records of each transaction which emanates from it. Certain of the information is printed upon the vouchers which are given by the vendor to the customer. Vouchers are issued with a view to each voucher being used to obtain the right to use the amount of electricity purchased at a particular prepaid electricity meter situated at the customer's premises (usually his house). The vouchers reflect the value of electricity being purchased, the date and time when the voucher was printed, the number of the vending machine and the code required to be entered into the particular meter for which the voucher is valid.

It is immediately apparent that vouchers cannot be printed at random. Vouchers are printed for particular customers who provide their meter number and who intend to use the voucher almost immediately. Once the code has been entered into the particular meter by the customer, the customer is entitled to and is able to access electricity up to the value of the voucher as and when the customer requires it.

It is apparent why the system is referred to as a prepaid system. The vendor prepays Eskom; the customer in advance of obtaining the electricity which he requires, prepays for it.

Eskom is able, by using the information obtained from the machine which issued the vouchers, to ascertain the total value of the sales made by the machine as also detailed information of each machine.

It is common cause that the transfer of data from the vending

machines to the Eskom database is electronic and that there can be no mistake as to the data which is transferred. The data produced by Eskom as to details of each of the transactions executed by each vending machine is common cause in this matter. Eskom retains no records of the actual consumption of electricity by the person who purchases the voucher. It does not know whether or not that person actually used the voucher by entering the unique code into the meter. The only data which Eskom is able to provide from its records is the detail of each of the transactions underlying the issue of vouchers.

The evidence of Eskom, presumably based on its customer consumption, is that all vouchers which are bought are used. There is no documentary proof of this. Eskom supplies electricity in sufficient quantities to the whole grid to be able to supply any and every consumer once he has established his right to receive electricity. The assumption made by Eskom is that as its supply of electricity is continuous and hence always available to the meter within the customer's property the customer will want to receive electricity continuously. It assumes that the vouchers it sells will be used virtually immediately. This assumption is dependant upon the premise that people who buy the vouchers buy them for a reason, namely to use them and also that insofar as the consumers in question are concerned they are indigent and would only spend money to buy electricity when they need it. Eskom provided shorthand evidence for this concept saying that it regarded transactions for the sale and consumption of electricity as complete once the vouchers had been bought.

The State was unable in respect of each and every voucher to establish that the persons who had bought such vouchers had actually used them to obtain the electricity by reason of the nature of the records which are kept by Eskom.

The State was able to establish in respect of each voucher which was produced that each had the unique meter number of a consumer. In respect of certain of the vouchers those numbers corresponded with meter numbers controlled by the three accused.

The evidence of Eskom in regard to the consumption by its customers appears to me to establish that it was notorious that customers who bought vouchers immediately would use them. It would be logical for customers who purchased vouchers to purchase them at a time when they needed electricity and it is also logical that they would want to maintain continuous electricity supply to their premises. The vouchers are purchased for relatively small values and it is evident that they are valuable articles in the possession of the persons who buy them for the specific purpose and who probably immediately use them.

It is convenient, in advance of reaching the point when it needs to be dealt with fully, to merely note that one of the issues raised by the accused was the inability of the State to establish that the vouchers had been used by the customers to obtain a supply of electricity. It appears to me beyond reasonable doubt that the State established that the vouchers were used. The interesting suggestion is that there may have been for example one of the vouchers mislaid, damaged or lost and if the State is unable to prove which one it was which was lost that the

accused are entitled to an acquittal on all the charges in relation to the vouchers. I will deal with this matter more fully below.

It is common cause that the five vending machines were found in two flats: four were found in one and one was found in another. The data which was contained upon each of the machines are similarly common cause. That data in respect of each of the machines establishes the usage and production of vouchers by each of the machines over a period. That data founded each of the theft counts in respect of the use of the vouchers be it for electricity or electricity credits.

This portion of the case which founded those charges was common cause. However, it was not common cause as to who the person and/or persons had been who had generated the vouchers. It became common cause that the five machines had been found at the two flats in question. It was common cause that the vending machines belonged to Eskom. It was not common cause whether or not the accused were the persons who had stolen the machines or who had possessed them. The issues between the State and the accused became settled and were:

1. Whether or not the accused were the persons who had used the machines to generate the vouchers and whether or not the accused were the persons who had possessed the machines.
2. Whether or not the acts allegedly committed by the accused constituted offences under POCA.
3. Whether or not even if the accused had perpetrated the deeds:

1. The machines had been proven to be stolen;
2. Electricity could be stolen;
3. Electricity had in fact been stolen;
4. If electricity had been stolen there was proof of this in respect of every single count;
5. The same issues as above in relation to electricity credits;

4. Some of the charges constituted duplication.
5. The law needs to be developed to encompass energy as being a thing capable of theft.

It is against that background that the evidence which was furnished by the state needs to be considered.

On 21 May 2008 the sheriff for Westonaria in the course of his duties went to 4 Echo Court Westonaria [the Westonaria flat]. The reason the sheriff went to the Westonaria flat was because he had been given authority by the judgment creditor to enter upon the premises with a view to executing a warrant which had been issued against accused 2. The sheriff entered the Westonaria flat and found a variety of computer equipment, printers, rolls of paper with codes on them, white cards which looked credit cards and which had a magnetic strip on them. The four machines within the Westonaria flat were identified as VSZ124, VSZ141, VSZ071 and WKT001.

The printers were printers of the type used to print vouchers. The cards with magnetic strips on them were cards which could be used together with the card reader/printer which was present to assist in the generation of the particular data required for a particular customer in the

issue of a voucher. The sheriff also saw a number of, what appeared to him, to be printed vouchers. All of these items are referred to as the equipment.

The sheriff suspected that the equipment had been used by a person or persons unknown to him to generate prepaid vouchers using the equipment. He suspected that an unlawful activity had been conducted from the premises. The sheriff finished making his inventory which he, as he is required to do, attached to the front door of the Westonaria flat. While he was in the process of doing this a person arrived in a blue Volkswagen Golf. This person is accused 1.

Accused 1 asked the sheriff if there was anything wrong at the flat, whereupon the sheriff asked accused 1 whether he lived there. He was told by accused 1 that he and his girlfriend (who the sheriff had seen sitting in the Volkswagen) proposed using the flat. The sheriff showed accused 1 the equipment inside the flat and asked accused 1 what he knew about it. Accused 1's answer was that the flat belonged to his friend and he knew nothing about the equipment. The sheriff told accused 1 that he, the sheriff, was suspicious and that he intended to contact the police. Thereupon accused 1 appeared to look worried. Accused 1 walked away hurriedly and left hurriedly in his car.

The sheriff telephoned a policeman, one Warrant Officer Botha [Botha]. He told Botha of his suspicions and described the motor vehicle including the registration number and colour to Botha. Botha stopped accused 1 on the road and he and accused 1 returned to the Westonaria flat. During the course of the conversation accused 1

indicated to the sheriff that his friend was a Mr Ndebele [meaning accused 2] who worked at South Deep Mine. Some time previously the summons in the matter which instituted the action pursuant to which judgment was granted against accused 2 had been served personally upon accused 2 at the Westonaria flat.

The sheriff was asked to and did identify a series of pictures showing the equipment in the Westonaria flat and the equipment is all recognisable from the set of pictures. It is common cause that the set of pictures reflects the contents of the Westonaria flat insofar as same appears on the pictures at the time the sheriff was there.

Botha spoke to accused 1. Accused 1 and Botha went into the flat and saw the equipment. Botha believed that the equipment was being used to create vouchers which could be used to obtain electricity. His suspicions were confirmed by certain persons who came from the municipality and inspected the equiptment. Accused 1 at a point in time called Botha to one side and told Botha that he would buy him a coldrink if Botha would let him go. Botha rejected the suggestion.

Sometime later accused 2 came to the flat. He was driving a red BMW. In response to a question from Botha, accused 2 said that he used to live in the flat but that at that particular point in time he was living in Randburg. Botha had read the documents pinned to the door by the sheriff and formed the conclusion that the person referred to in the documents was in fact accused 2 and that it was accused 2 standing before him. The two accused blamed each other concerning the possession and control of the equipment. Botha arrested both accused

1 and accused 2 and only then administered the warning in terms of Judges Rules to them.

During the course of the trial the admissibility of the statements made by the two accused was put in question. I wrote a fairly lengthy judgment in relation thereto and ruled that the statements were admissible. I abide by what I have said then and would add only the reference to one authority which I omitted namely, *S v Shongwe* 1998 (2) SACR 321. I exercised extreme caution in relying upon any of the statements made by the accused. It is apparent to me from the evidence of the members of the South African Police that their recollection independently of the first statements they made was vague. In one case there was a patent error by a witness which could only be rectified once the original statement which had been lost was recovered. This is not to say that the evidence of the police on other matters is unreliable. It is merely that in respect of the recollection of oral statements made, it is easy to make errors and I am very conscious of that fact.

Statements were made by the accused to Captain Van den Heever [Van den Heever]. As to the substance of the statements, which I approach with the same caution, the position of Van den Heever is different as I set out in the earlier judgment in that by the time he spoke the accused the warnings to which they were entitled had already been administered. I held that the warnings were adequate and remained operative even though the statements were being made to a policeman who did not give them.

After Van den Heever arrived he examined the BMW in which accused 2 had driven to the Westonaria flat. Inside the boot of the BMW he found a bank bag containing vouchers which looked like electricity vouchers. There is no dispute between the State and the accused as to the fact that a bank bag containing vouchers was found in the boot. The fact that such a bag was found at the scene is also corroborated by the fact that a bank bag was handed in to be recorded as an exhibit.

Accused 2 did not dispute in his evidence that there were vouchers found within the BMW. The issue which he raised was whether or not that they were not electricity vouchers. He claimed they were builder's vouchers belonging to his brother. By builder's vouchers he meant receipts for purchases of building materials.

According to Van den Heever when accused 2 was shown the vouches in the plastic bank bag he said that he had sold electricity and that he had got the vouchers from "Michael" at the taxi rank. Accused 2 at that time patently accepted that the receipts were not "builder's receipts". He also accepted that they were his and that he had knowledge of them.

It is necessary to deal with the issue concerning the bank bag itself. The evidence of Van den Heever was that within the bank bag were vouchers similar to the prepaid electricity vouchers. The bank bag containing those vouchers, which had been found in the back of the BMW, was handed into the SAP exhibit room as item 2 and is listed as such. All the items handed in were listed and given item numbers.

The vouchers at a point in time were extracted from the bank bag and examined. They were handed in as Exhibit F. An attack was launched upon whether or not those vouchers were the vouchers which had been contained within the bank bag and also upon whether or not the bank bag was the bank bag which had been found in the BMW. This attack came about because a Mr Rossouw [Rossouw], who gave evidence concerning his examination of the vouchers, referred to the vouchers as having been listed as item 7. When he was questioned as to whether or not he had listed them as item 7 he conceded that he had made a mistake and that they were in fact listed as item 2. A line of questions demonstrated that it was difficult for Rossouw to have made a mistake as he had referred in the document not only by its item number but also the number which was attached to the bag. This latter number was incorrect if the bank bag was the bank bag referred to in item 2. The question is whether Mr Rossouw made a mistake or whether he gave evidence relating to vouchers which were not the ones which had been in the bank bag referred to as item 2.

The evidence that Rossouw had made a mistake is corroborated, in my view, by at least two features of the case. All the items were handed in at the police station and recorded in the exhibit list. There are two different exhibit books; the one is a book which contains exhibits which it is proposed will be used in the trial, and the other is a book with only receipts for goods taken from the accused persons. The SAP 13 form at Westonaria was handed in as

Exhibit I. That form lists a number of items which were handed in and which received marks. Item 2 is a reference to a bag containing an ABSA plastic bank bag with printed vouchers. It was given the number FSC-435368. This is the only bank bag which was handed in and it was handed in containing the vouchers. Item 7 is a reference to a bag containing two black floppy discs and an unknown number of electricity credit cards. The bag bears the number FSC-435332 and it is marked item 7.

The electricity credit cards are different to the vouchers. These credit cards are white plastic cards with magnetic strips. Bag 7 contained no vouchers. If Rossouw had looked inside bag 7, as it appears he did from the Statement, he would not have found vouchers. I conclude accordingly that he must have been mistaken in saying he did so. The further fact upon which I rely on is that all the witnesses who form part of the chain leading to Rossouw receiving and examining the vouchers spoke of a bank bag which contained vouchers. There was only the one bag and that bag went down the chain to the witness. This identification of the object containing the vouchers further corroborates the fact that Rossouw had made a mistake. In my view, the State proved beyond reasonable doubt that the vouchers which form the subject matter of Exhibit F were the vouchers found within the bank bag in the BMW.

A witness, one Cindi was called to establish who the occupant of the Westonaria flat was. She was however, unable to shed any light on this.

On 20 April 2007 various members of the South African Police went to flat number 101 Aquarius at Sasolburg [the Sasolburg flat]. The reason the South African Police went to the flat was because information had been provided that electricity was being sold from the flat. The purpose of the police going to the Sasolburg flat was to go to the flat, not to go and seek out a person. They did not know the name of, or who, if anyone occupied it.

When the policemen arrived at the flat one of them saw accused 1 exiting it. There was a dispute between the policemen as to whether or not accused 1 was actually exiting the flat or already outside it. Nothing turns on this dispute. As is apparent from the evidence of the police and the events which followed, accused 1 was in such proximity to the Sasolburg flat that the police were able to associate him as the person who was relevant to that flat and had exited it.

They accosted accused 1 and the only reason why they would have accosted him, in my view, is because he, in their minds by reason of his activities in relation to and his proximity to the flat was linked to it. This view is corroborated by the fact that subsequently it became apparent that accused 1 was linked to the flat. He had the key to it.

Accused 1 accepted that he and accused 3 had sought to rent the flat, which ultimately was rented by accused 3. This link is corroborative of the evidence the police gave linking accused 1 to the flat.

Accused 1 and the police went to the flat. It is irrelevant whether there was the intervening door. The existence of this door may have a bearing on the number of keys that a person who wanted to gain access to

the flat would need. Apart from that it appears to me to have no bearing.

At the flat, accused 1 opened the door and in doing so he used a key. Accused 1 disputed that he had a key for the flat. It is common cause between the State and accused 1 that the door was locked and that a key was necessary to open it. The dispute ranged around who had the key. The natural person to have had the key would be accused 1 as being the person who was related to the tenant, accused 3.

The strongest evidence in my view concerning the key issue is the absence of damage to the door, which establishes that a key must have been used. The police had no keys or means to access the flat they only had information relating to the flat. The rhetorical question to be asked is where they would have got a key. In my view the State established beyond reasonable doubt that accused number 1 had a key to the flat and that he used it to open the door. This conclusively establishes his possession of the flat and its contents.

The police and accused 1 went into the flat and found a host of equipment, including computer equipment, printers, other machines and papers, similar to the equipment which was found in the Westonaria flat. The vending machine in question was VSX031.

While the police and accused 1 were in the flat, accused 1 was asked what he was doing at the flat and his answer was that the flat belonged to a friend, who he did not identify. A cell phone which he had in his possession was examined and according to the police it contained a voucher similar to an electricity voucher.

There is no evidence before me as to what that voucher is, other

than the say-so of the police. I do not rely upon the existence of that voucher, whatever it was within the pouch of the cell phone as advancing either case. The evidence within the flat was obtained and marked as an exhibit.

Both accused 1 and accused 2 were linked to the flats by their physical presence at them. Accused 1 was found at both the Westonaria and Sasolburg flats. He had the key to the Sasolburg flat. He was a friend of the lessee of the Sasolburg flat. Accused 2 the lessee of the Westonaria flat was found in possession of the electricity vouchers exhibit F.

The two flats between them contained the five vending machines, credit cards which are used in conjunction with the machines to print vouchers, printers necessary to print vouchers, rolls of paper and printed vouchers. It is apparent that the business of creating vouchers having a credit value and disposing of such vouchers was being carried on at both flats. The extent to which vouchers had been created was established by the printouts reflecting the transactions. The business was substantial and flourishing.

Armstrong Matala was called in relation to the theft of VSZ071. He stated that he had concluded a contract pursuant to which he was given an Eskom vending machine, which bore the number VSZ071. The number is written on the contract; however he never personally looked at the machine to ascertain whether or not the machine which eventually was supplied to him was in fact that one. He was only able to state that he had a contract with Eskom pursuant to which a machine was delivered; to identify the contract; to state that the machine which he received, he no longer possessed after January 2005. He was unable to state how the machine

came to be stolen. All he could say was that he controlled employees. He had a machine under the control of employees at one point in time and subsequently he did not have it.

It was suggested that he was vague as to how the machine came to leave his possession. This may be. He was however certain that he did have a machine at a time and at a later point in time he no longer had it. He knew of its existence and its loss as there were financial consequences which attached to the loss of the machine. He did not give permission for the machine to travel out of his possession.

A further issue was raised in relation specifically to this machine. That issue arose out of the fact that one of the exhibits describes a different machine as having been issued to Mr Matala. It appears from Exhibit CC2, a screen dump from the Credit Control Data Base reflects that the number of the machine Mr Matala had was VSZ124. Exhibit DD2 reflects that machine VSZ071 was in a Sebokeng Zone 7 and had been retired per Likomang. This is the same person whose reference appears on CC2. On the face of it there is a conflict as to which machine Matala possessed.

There is no question of the identity of the machines which were recovered. The only relevance the identity issue has is whether or not the evidence of Matala established that VSZ071 had been stolen from him. It is unnecessary to resolve this issue. Eskom owned all the machines at all times. The person who possessed the machines in the two flats were never authorized by Eskom to possess them. Theft is a continuing offence. Whether or not the persons who possessed the machines in the flats actually stole them from the person authorized to possess them does not have to be

proven. Anyone in possession of the machines would know that, absent consent from Eskom the possession was unlawful and hence that they were in possession of stolen goods.

The machines' data had not been collated as required, from the time that each machine was removed from the possession of Eskom. This fact establishes that the machines were removed from the control of Eskom at or about that particular time. The fact that the data was not collected goes to show also that the person using the machine had no permission to do so. The theft of the other machines was established in the normal way.

There is in my view a simpler solution to the problem. No person who possessed any of the vending machines could possibly have believed that those machines were lawfully possessed, considering the nature of the machines and the circumstances in which the machines operated. No person who came into contact with the machines, situated as they were, in a flat printing vouchers could possibly have believed that these machines were not stolen.

In my view the possession of this type of machine is similar to the possession of an ATM. No person who found an ATM in a flat could believe that the ATM was lawfully there.

In analysing the evidence, I must have regard to the totality of the evidence before me and draw inferences from the facts which I find to be proven.

See *S v Toby* 2004 (1) SACR 534 which contains a convenient summary of the cases. See also *S v van der Meyden*, 1999 (1) SACR 447 (W) at 448 H – 450 C. The facts in my view establish theft of the vending

machines.

The question which arises in relation to the evidence is what all the evidence means. The objectively established evidence, concerning the machines and the data relating to their use, establishes the identity of the machines and all the data relating to their use over the period. The data establishes, in respect of each of the counts 8 to 78 287, that vouchers were issued reflecting the right to receive electricity for certain amounts, on the dates and in respect of the meter reflected on the voucher.

For the reasons which I have given earlier, I find that the vouchers were used and that electricity was actually supplied in the amounts which appear upon the vouchers on or about the dates reflected on the vouchers. All the factual requirements in respect of counts 8 to 78 287 were accordingly established by the State, leaving only one issue to be determined namely who the person was who committed the acts proven.

The State led the evidence linking the accused to the flats where the machines were found.

The State also advanced evidence to link the accused to the offences by furnishing evidence of the meter box numbers of the meter boxes at their places of residence. This evidence if accepted would link meters for which vouchers had been printed to those meters. If the meter numbers matched those controlled by the accused then this would establish a link of the accused to the machine which printed the vouchers.

Mr Mogapedi who works for Komodo Investigative Services who had been seconded to Eskom was authorised by Eskom to visit the premises as if he was an Eskom employee. He was issued with appropriate

documentation reflecting his authorisation by Eskom, in the form of some identity document and was directed by Eskom to attend upon the homes of the three accused.

He went to the house of Accused 2, he entered upon the premises without permission of any person, as he found none there. He read the number of the meter. The meter is situated on the outside of the house, but on the inside of the property.

He went to the house of accused 3, a woman opened the door, he asked to check the meter box, showed his card and was shown the meter box and wrote down the number.

He went to the house of accused 1, entered upon the premises and knocked; there was no response. There was a person working in the garden to whom he could have, but did not, speak. He found the meter box attached to a wall outside the house, but inside the property. He wrote down the number and on his way out, he met accused 1. Accused 1 asked him, whether or not, he the witness, could organise a voucher machine for him. He declined to do so.

The issue was raised whether or not the Constitutional rights of the accused had been invaded. They have a right to privacy and a right to give consent to invasion of their property.

In respect of accused 3, it seems to me there was consent. In respect of accused 1 while there was not prior consent, there appears in my view to have been some form of tacit consent subsequent to the meter number having been obtained. Insofar as the right of privacy of number 2 is concerned, it appears to me that his rights were invaded, even although the

meter was readily accessible.

The submission was made that by reason of the provisions of the legislation governing electricity supply and in particular the Electricity Regulation Act 4 of 2006, that persons authorised by Eskom had a right to enter upon the premises to inspect meters and that, that right overrode rights of privacy (Section 22: Electricity Regulation Act). The rights of a person, who wishes to access the meter, are contained within Section 22 (2) which provides the mechanism by which access is to be obtained. This requires, if possible for arrangements to be made with the legal occupant of the premises, prior to entry upon the premises and an obligation to adhere to all reasonable security measures of the occupant or owner of the premises.

In relation to accused 2, it appears that no arrangements could be made: there was no one home. The same possibly applies to accused 1, in the sense that there is no indication that the person upon the premises had the right to give consent. I am entitled to admit the evidence if it is fair that I should do so. In my view, it is fair to admit the factual evidence. The evidence is of an objectively ascertainable fact that continues to exist. The accuracy of the evidence cannot be cogently challenged and indeed was not challenged. The invasion of rights was of a non-invasive nature. No force or improper means of gaining access was used by Mogapedi. In my view, the evidence is admissible.

It was suggested to the witness, Mr Mogapedi, that he was misrepresenting his position as he was not an employee of Eskom. He is employed by an independent contractor, contracted to Eskom to perform

certain work for it as and when it requirs. Eskom required him to perform this work and sanctioned its performance by providing him with the wherewithal to do so. There was no misrepresentation.

A suggestion was made that the reading of the meter number, as opposed to other data on the meter, did not constitute an exercise of rights under the Act to which I referred. In my view, that submission is ill-founded, having regard to the wording of the section.

The relevance of meter numbers is that certain of the vouchers comprising Exhibit F have meter numbers which correspond with the meters used by some of the accused. Exhibit HH sets out in respect of accused 2 and 3 that vending machine VSZ124, VSZ141 and WKT001 had at times printed vouchers for use on their meters. All that this evidence shows in relation to accused 3, is that someone bought a voucher bearing that meter number for the amounts and on the dates set out. There is no evidence that that person was accused 3. There is similarly no evidence that accused 3 knew of the existence of these vouchers, or in any way came into contact with them. The same applies to accused 2 in the abstract. Once the evidence is placed in its proper context however it provides corroboration for a finding that accused 2 participated in the commission of the offence.

What if one voucher made by a machine and sold was not used by the customer? There is a link beyond reasonable doubt between the consumption of the electricity and the use of the vouchers. Customers who buy vouchers use them. There is a possibility that if one or more might have not been used in the sense as it was lost or not used for some unknown reason. The consequence, so it is submitted, is that there is no proof of any

of the charges of theft of electricity. The submission is founded on the premises that as one voucher is lost, it could be any one relating to any charge hence no single charge is proved.

In my view, the solution to this problem lies in the fact that vouchers were a valuable asset and there is no evidence, even remotely suggesting otherwise than by speculation, that any might have been lost. The evidence simply does not found the problem which it is required of me to solve.

The remaining question which arises irrespective of the link of the accused to the events is whether or not electricity can be stolen.

In order for a theft to take place, the property which is removed must be a thing capable of being stolen. According to Roman and Roman-Dutch Law as a *contrectatio* was the handling of a thing, theft could not be committed of an incorporeal thing which could not be touched and so could not be taken in hand. The general rule seems to be that only corporeal or movable things are capable of being stolen and thus incorporeal property cannot be stolen. See *South African Criminal Law and Procedure*, Volume 2, 3rd edition by J R L Milton page 600. Property stolen must be "'n selfstandige deel van die stoflike natuur." See *Snyman, Strafreg* 3de uitgawe, page 493.

It has long been recognised that rights of action (rights in chose) having no corporeal existence, cannot be the subject of theft. See for example, the chapter on *Larceny in Wharton's Criminal Law*, Volume 1 paragraph 878 and following and Glanville Williams Textbook of *Criminal Law*, 2nd Edition page 736.

The fact that an incorporeal cannot form the subject of theft, has

been recognised as a difficulty, particularly where money and shares are concerned. The question was left open in *R v Milne* or *Erleigh*, 1951 (1) SA 791 (A). The fact that an account holder is not the owner of money in his bank however, does not mean that he is not a person with a special property or interest therein, such as to result in the monies being capable of theft. See: *S v Kotze*, 1961 (1) SA 118 (SCA). The Supreme Court of Appeal has held that a person who receives monies into his bank account in his name, knowing that he is not entitled thereto and who uses them commits theft. See *Nissan South Africa (Pty) Limited v Marnitz NO and others* (*stand 1 at 6 Aeroport (Pty) Limited intervening*), 2005 (1) SA 441 (SCA) at paragraphs 24 and 25.

The underlying objection to holding that an incorporeal is capable of theft is the requirement that there should be a *contrectatio*. Inasmuch as a taking is required, so the argument goes, there can only be the taking of a physical movable. This matter was dealt with directly in *S v Harper and Another*, 1981 (2) SA 638 at 664 and following which held an incorporeal capable of theft.

This concept has been recognised in our society, for example in Nissan supra. In the modern day there are more complicated transactions than existed historically and hence than were considered historically. In Nissan's case, the thief received into his bank account a credit independently of any action taken by him, which resulted in the amount reflected as standing to his credit being increased. In the ordinary course these credits are owned and possessed by the bank. The customer has only a special interest to them arising out of the contract he has with the bank. The credits

exist electronically and constitute a cash value sounding in money. The rights reflected by the credit accordance with the customer/banker contract however vest in the customer who can use the credits at his will. The customer whose account was debited to create the credit in the other customer's bank account has diminished claims against the bank in his account. On the authority of Nissan such person has lost a thing capable of being stolen and that thing is stolen when the customer uses the credit to which he is not entitled. There is no physical handling of anything.

Hence the *contrectatio* is constituted by an appropriation of funds, which already exist in his account but, to which the customer is not entitled. This is not a *contrectatio* constituted by a physical removal of something from the owner. It is a taking of an electronic credit given by mistake and not processed or owned which is used deliberately against the interest of the owner. The *contrectatio* is constituted by an appropriation of a characteristic which attaches to a thing and by depriving the owner of that characteristic.

Inherent in the finding in Nissan's case is that this appropriation of a characteristic attaching to a thing does constitute theft. Once this understanding of what can be stolen is reached, the subsequent decisions which are all collated in South African Criminal Law and Procedure (supra) at 601 become explicable.

A decision which is out of step with that thinking, which has been in existence for many years now, is *S v Mintoor*, 1996 (1) SACR 514 (C) at 515 where it was held that electricity is an energy and that energy is incapable of theft. The learned Judges, who reached that conclusion, had no regard to the authorities (some of which postdate the judgment) to which I have

referred in relation to the appropriation of a characteristic attaching to a thing and merely adopted the Glanville Williams reasoning as authority for the proposition that electricity, could not be stolen. S v Harper was not considered. The minority judgment in Milne earlier cited supra was not considered.

It is necessary to consider what electricity is in this context. Eskom creates electricity by the use of fuel sources which power turbines. There is a cost involved in the creation of the electricity produced. That electricity is inserted into a grid. At points on the grid, there are consumers who, if Eskom permits them, may receive electricity and use such electricity. That right to receive and use the electricity, is subject to terms and conditions which Eskom imposes upon its consumers and to which they agree. One of the requirements is the obligation to pay money for the right to receive measured quantities of electricity.

Eskom, when it provides the electricity, does so using closed circuit. The flow of electricity is dependent upon the flow of electrons. Eskom creates energy which results in electrons flowing (this is what we call electricity). No electrons are lost. The characteristic attached to the electrons is that when they are driven in this way, they are energized and capable of driving a load. The energy does not exist as an abstract concept it exists in reality in the form of energizing electrons.

The electrons which are driven, and which, while travelling we call electricity, are the free electrons moving through the circuit. They belong to, are processed and released by Eskom. Eskom has the countrywide grid and the consumer has the tiny portion of the circuit attached to that grid which

comprises the circuitry in his house after the meter. The number of electrons within the customer's circuitry is insignificant by comparison to the number of electrons in the grid. The process by which the electricity is delivered is that as an electron travels into the customer's circuitry, one leaves the customer's circuitry returning to the grid. In this way there is a flow of electrons which remains in balance. The number of electrons which enter and leave the circuit of each customer, as I have stated, are insignificant in relation to the total number of electrons in the grid.

That being so for all practical purposes, once the customer uses the circuit and allows electron into his circuitry, the electrons of Eskom remain within his circuit, in substitution for those electrons having departed. In this way, the electrons change position, having originally being possessed by Eskom and subsequently being possessed by the consumer. The characteristic which attaches to the electron is the energy by which it moves. That characteristic is consumed when the electricity passes through a load in the customer's residence on the customer's circuit. The energy is transferred into the load used by the consumer (a kettle, a light, or other electrical appliance). That characteristic and the extent to which it has been used or transformed by the use of the electrical appliance is measureable. That characteristic is the characteristic which Eskom chooses to produce and sell to its customers. Once that characteristic, energy, is used by the electrical appliance or the load, it is no more.

This also is the solution to the question of whether or not there has been a permanent deprivation. Electrons are not lost and eventually return to the grid from the customer's circuitry. However the characteristic attached

to the electron, namely the force and energy it has while it is being driven towards and through the customer's circuit is removed from it. It is possible to understand this by considering a stream of water. If a stream of water is pumped up a distance above the ground in a closed circuit and allowed to fall to the ground again, the force used to pump the water up equals the force with which the water falls back.

The falling water has a particular characteristic, it is imbued with energy. That energy, absent any interference with the flow, is not lost and so the water will strike the bottom with a degree of force. If however, a load is inserted on the downward fall of the water, for example, a water mill, or paddles, the force of the fall is transmitted into energising the turbine or paddles or other load put in the way and the force with which the water hits the bottom is reduced by the extent of the load. So the water after it strikes the load will fall more softly and with less force. It is immediately apparent that the characteristic of the water before the load and the characteristic of the water after the load is different. It is this difference which is lost that constitutes the characteristic lost by use of electricity.

I consider another example: if electricity is not capable of being stolen, then anyone would be entitled without permission of the owner to attach a load to his batteries and deplete the energy within them, thereby rendering the batteries useless. Yet nothing will have been stolen. Nothing physically has been taken from the battery, however its characteristics have changed.

It appears to me that modern day society has already advanced and accepted that there can be theft of this nature. See for example the

informative article by C R Snyman, "*Die gemeenregtelike vermoeiings misdade en die eise van ons moderne samelewing*," 1977 SACC 11 particularly at 14.

It has long been recognised that the abstract and incorporeal nature of a right, which has been taken in the context of notes and coins is a loss. See for example, *S v Scoulides,* decided in the 50's (1956 (2) SA 388 (AD) at 394 G).

The same reasoning applies to the submissions made in relation to electricity credits.

It was submitted that I should consider developing the Common Law to encompass energy as a thing capable of theft. In my view, I do not have to do so and I do not deal further with this issue.

I now consider whether or not the State managed to establish that the accused were the persons who committed the acts which I find established. Insofar as accused 3 is concerned, there is no evidence whatsoever, other than the following few matters.

She had a contractual right to occupy the flat in Sasolburg, but as a fact she was not occupying it. The electricity meter where she stays has a number which is reflected on vouchers as I have dealt with earlier. There being no evidence that she had anything to do with the vouchers raises no more than an unsubstantiated suspicion. In my view, there is no evidence entitling any court to convict accused 3 and I propose acquitting accused 3 in due course.

As far as accused 1 and 2 is concerned, their direct evidence in court was a disavowal of any knowledge of the equipment and the presentation of

a variety of facts distancing themselves from the physical evidence contained both within the flats and the bag found in the BMW.

Insofar as the Sasolburg flat is concerned, I found already that accused 1 had the key to the flat, that he opened the door and that access was gained in consequence thereof. His version is both improbable and not in line with the factual evidence before me. It is simply untrue on the readily ascertainable facts.

Accused 1 in addition, was linked to the Sasolburg flat by reason of his involvement with the conclusion of the contract between accused 3 and the landlord. That flat had been obtained for himself and number 3 to reside in, but they never lived there according to him. Notwithstanding this, the lease was kept in place and no tenant was found when he went there. In my view, that is decisive in establishing that accused 1 had knowledge of the activities which were taking place within the Sasolburg flat and that he possessed it.

In my view, he was a poor witness. He was an extremely clever witness, as was accused 2 and my impression was that the evidence presented was tailored to meet the cross-examination as and when the inconsistencies and flaws in the evidence were presented to the accused.

As far as the Westonaria flat is concerned, he claimed to have been en route to the flat, as a favour to accused 2, but also with a view to a romantic liaison. He claimed that he did not have a key to the flat. It appears to me extremely improbable that accused 1 would have travelled the distance which he claims he travelled, without a key, without knowledge as to whether or not he would at all be able to gain access to the flat, otherwise

than if the occupant was there. Accused 2 had previously called the occupant and never gained access as accused 2 had been unable to find her. That was the reason why accused 1 was being asked to go there by accused 2. Accused 1 on the evidence had little prospect of gaining access.

It seems improbable to me that the accused would travel there, not knowing whether or not the occupant was there, or would let him in or would agree to him pursuing his romantic interest with his companion, even assuming he was let in.

The whole version appears to me be improbable and designed to meet the State's case. When there is added to this improbability, the fact that accused 1 hurried away from the flat, after he spoke to the Sherriff, his version becomes even less likely. In addition, during his evidence he made a series of statements about his contact with accused 2 at the time he left the flat concerning when and how he could have, perhaps may have, found accused 2, all of which appeared unusual. Why could he have not simply have phoned accused 2 from the flat and left a message for accused 2 who at the time was underground working. The reason is that accused 1 needed to escape; he needed to be away from the flat as soon as possible. He feared being at the flat where he would possibly be arrested. Hence, he hurried away and only then phoned accused 2.

Contained within the Westonaria flat was equipment similar to that contained between the Sasolburg flat. The statistical chances of a person being involved and present at the scene of different flats in different cities containing similar equipment are nil. The factual probability is far greater that accused 1 was involved with activities, both at the Westonaria and the

Sasolburg flats.

As far as the connection of accused 2, to the events in question is concerned, the evidence against accused 2 consists of his links to the Westonaria flat.

Accused 2, admitted that he had occupied the flat at a point in time, but denied that his occupation was in place at the time of the discovery of the electricity machinery. His evidence was that a third party was the tenant of the flat and that third party had died early in May 2008. Accused 2 said that the third party had asked him whether or not there could be another occupant together with her in the flat and that he had agreed to that. He had been to the flat on several occasions, but had been unable to gain access. He described the one occasion when he had gone there and heard music playing, but had been unable to gain access. It was for this reason that he had spoken to number 1, to attempt to gain access. His working routine impeded on his ability to easily have time available to gain access to the flat. He was unable to identify the tenant, as he had never being told who the third party had allowed to occupy it. This was the reason why he was unable to identify the tenant in any way or lead the police to such tenant. This evidence is improbable and was fabricated to create a ghost occupant.

Some of the articles in the flat were admittedly accused 2's, for example the pool table. He gave no explanation why the pool table would have been left behind at the time that he had vacated the flat. It seems to me unusual that a person vacating the flat would not take all this things including the pool table. It is much more likely it was left there deliberately.

Accused 2 gave an explanation for his driving the BMW, namely that

he could not use his own car that day and so he had borrowed his brother's car. He claimed not to have any knowledge of the vouchers Exhibit F which were found within it. This claim of his must however be untrue, having regard to the fact that certain of the vouchers are directly linked to the accused, they reflect the serial number of the meter which he uses at his home and those vouchers were generated as I have dealt with previously, by the vending machines which had been stolen, namely, VSZ124 on 3 May 2008, VSZ141 on 18 March 2008 and WKT001 on 9 April 2008.

Having regard to the mechanism by which the vouchers are printed, it is apparent that the person, who bought these vouchers, bought them for use in a particular meter namely accused 2's meter. It is highly improbable that this purchaser would have been the brother of accused 2. There is certainly no claim by accused 2 that it was his brother who had generated these vouchers. These vouchers beyond reasonable doubt link accused 2 to the activities of the machines. I find that the vouchers in the BMW were in the possession of accused 2 who knew of them and who had generated them.

The further difficulty which accused 2 faces in regard to the Westonaria flat is his inability to explain the documents contained within Exhibit J. These documents were found within a kitchen drawer in the Westonaria flat.

The explanation of accused 2 in respect of these documents was that the occupant of the flat had collected his mail. The problem with this explanation is that the documents in question were not contained within envelopes. If the tenant had opened the envelopes one would expect to find the envelopes in the drawer. They were not included amongst the

documents is a payslip which there is no evidence was posted, but which presumably was handed to the accused at work.

In addition, contained within the series of documents, are documents which are not commonly posted. These are the registration certificate and the licence for the Wrangler. The licence receipt for the Wrangler bears a date printed on the bottom, September 2006. The expiry date of that licence was the next year, so this was a document generated in 2006. On the version of the accused this document must have been posted to the flat during the occupancy by the deceased in 2008. This is simply incredible and against the probabilities. The document must have been posted when it was created, namely in 2006. The licence bears the date when it was paid and must have been paid in person. It had the circle cut out to remove the disk that is attached to the vehicle. That disk is clearly missing on both the documents. This means that accused 2 had had those documents. The presence of these documents within the flat clearly indicates that accused 2 had been within the flat in 2008, at the time when he said that he had not been there. If he went into that flat, then obviously he knew what was happening in that flat.

There are a number of other factors which militate against accepting the version of accused 2 in relation to the flat. His version in relation to the activities of the deceased's relatives and the removal of the goods belonging to them is completely implausible. According to him they left items behind and took only a fridge. The items left behind were easy to move and on the face of it valuable. They are listed in the sheriff's inventory. If they had come to remove goods they would have removed all.

Accused 2 incurred huge debt in 2007. He had the Wrangler to pay for; he had the flat in respect of which he did not pay the levies, and cost of the flat in which he lived. His expenses far exceeded his income. He was patently strapped for cash towards the end of 2007 and had not paid rental. There was a judgment in the process of being taken against him and yet he was content to let the Westonaria flat lie fallow for December and January and carry two months wasted rental. These flats are in demand and he could have let the flat virtually immediately if he wished to. No cogent reason was provided for him to retain the flat, other than that he wanted to let it out to a tenant. Why then did he not find a tenant in December? His explanation in this regard is in my view unacceptable.

The simple fact is that he needed a venue for the activities being conducted in relation to the vending machines. Once he was captured by the police he needed to explain why the flat was still contractually his, while he was not using it and hence he came up with the version of a tenant. There is no doubt in my view that accused 2, who is a clever man, opportunistically found a reason why the flat was his, but not in his possession.

Throughout his evidence he invented and gave opportunistic answers to problems which were posed to him. An example concerns the letter which he claims was forwarded from his previous address to the Westonaria flat. This explanation was furnished to avoid the inference that he had been in the flat, as that letter in the ordinary course would not have been delivered to the Westonaria flat. The explanation however fails as the letter is dated subsequent to his occupation of the residence in Cosmo which

the accused currently occupies and to which the letter would have been forwarded in the ordinary course.

It is unusual that both accused 1's and accused 2's versions in relation to the occupancy of the flats in question, are similar. Both were dependent on the existence of ghost tenants.

Accused 2 was unable to deal properly with the question of the payment of rental for May. Originally the version was that the deceased had not paid for May at the end of April. Subsequently it became that the deceased had paid for that period and that was why there was no rush to eject her.

Accused 2's version as to why accused 1 was sent to look at the flat is similarly improbable and not acceptable. He provided accused 1 with no key; indeed he had no key to provide him with. The result is that he sent accused 1 far out of his way with the vain hope of meeting the occupant and gaining access to the flat, something he himself had been unable to do. For the same reason that I do not accept the version of accused 1 on this issue I do not accept the version of accused 2.

It seems much more likely to me that accused 2 left the pool table in the flat to while away the hours while he printed vouchers and that accused number 1 was a party to the activities. The reason that accused 2 was unable to explain properly and adequately the affairs concerning the relationship with the deceased's relatives, is simply because he had invented them as tenants.

It is inconceivable that after the death he did not seek the keys from the relatives. It is inconceivable that he did not ask for money for rent. It is

inconceivable that he would have such a casual approach to the occupation of the flat by them after all, on his evidence it contained documents and furniture.

Exhibit J12 is the statement from accused 2's bankers for the period ending 22 March 2008. The fact that this document was found within the Westonaria flat, is evidence that accused 2 was there after the date when this was both issued, posted and received.

Accused number 2 in addition made the statement with reference to obtaining vouchers from Michael. This statement has no place in the version advanced by accused 2 in court. It cannot but be that that it was an opportunistic statement to explain a situation with which he was faced. That statement currently does not suit him and he has abandoned it.

All of the above indicate an intelligent devious person who invented what he believed to be a plausible version.

In my view beyond reasonable doubt accused 2 was linked to the activities in fact within the Westonaria flat. Although accused 2 was not directly linked to the Sasolburg flat, it appears to me that the evidence establishes beyond reasonable doubt, that both he and accused 1 were complicit in both the activities. The same activities were being conducted at both venues. Accused 1 was present at both venues.

Accused 1 and accused 2 have a friendly relationship with each other. Accused 2 was the person who claimed to send accused 1 to the Westonaria flat. If he was sending him to the Westonaria flat, knowing of what was happening within that flat, as I found that he did, then he both knew of the activity and was complicit with accused 1 in the activity in Westonaria.

It appears to me the State proved beyond reasonable doubt the complicity of both accused with what was taking place at both venues.

The activities which were conducted at both the venues constitute racketeering as contemplated by the Statute. See: *S v dos Santos*, 2010 (2) SACR 362 at 401. The activities of accused 1, in my view comprised operating, managing and participating in the enterprise.

Insofar as count 2 refers to the management of the operation of the enterprise by accused 2 is contemplated by Section 21F of the Act. It is my view that that management has been established.

In analysing the evidence, I have attempted to rely pertinently on factors which appeared to me to be so clearly established that there can be no controversy about them. There are other features of this case, including hearsay evidence, which according to the Statute the State may rely upon, which further strengthens the State case against the accused.

My omission to deal with each and every one of those additional features is not to be taken as being that I did not consider them and insofar as I have not dealt in detail with the repeat conduct and the pattern of affairs, same is not to be taken as having being ignored. It is patent from the state of affairs produced by the vouchers, that this was a repeated pattern and an ongoing continuous activity. The dates appearing upon the vouchers demonstrate this.

The sole remaining issue, is the question of whether or not there has being a duplication of charges. In this regard I rely upon the authority of *S v dos Santos* supra at paragraph 43 and following.

In that case the Court relying upon *S v Whitehead and Others* in

paragraph 45, recognised that a single act may have numerous criminally relevant consequences and may give rise to numerous offences and that the State is at liberty to prosecute all such offences separately.

In my view, the evidence established the guilt of accused 1 and 2 as charged in the charge sheet.

I accordingly make the following order, that accused numbers 1 and 2 are found guilty of the charges levelled against them in the charge sheet in their entirety. Accused 3 is found not guilty and is acquitted.

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