



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
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STATUS Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Engelbrecht v The State (446/10) [2011] ZASCA 068 (17 May 2011)

In a judgment delivered on 17 May 2011, the Supreme Court of Appeal dismissed the appellant's appeal against his conviction on 157 counts of fraud but partly upheld the appeal in respect of the sentence imposed by the Western Cape High Court.

The State alleged that the appellant was part of a group of three who acted together in an elaborate fraudulent scheme which resulted in the South African Revenue Services (SARS) being defrauded of approximately R1,6 million in terms of Value-Added Tax (VAT) which was fraudulently withheld from SARS. The fraudulent scheme involved the appellant and two other co-accused. The scheme entailed the appellant procuring motor vehicles from his employer, Reeds Motors in Observatory Cape Town and delivering them to another dealer, Quattro Trade and Wholesalers (Quattro). The two former co-accused were involved with Quattro, one as the owner and the other as the manager in Cape Town. The appellant would, with the knowledge of the two co-accused prepare false documents purporting to be documents for the export of the vehicles to Namibia which would entitle the group to have the vehicles zero-rated. Instead of exporting the vehicles to Namibia as per the documentation, the vehicles would be sold locally by his co-accused, through Quattro. The two co-accused pleaded guilty to the charges in terms of s 105A of the Criminal Procedure Act 51 of 1977 and were sentenced accordingly.

In the trial against the appellant, the State relied on the evidence of the two former co-accused, together with the evidence of other witnesses and some documentary evidence. The appellant was convicted on all counts. On appeal the appellant attacked his conviction against the fraud charges primarily on the basis that the regional magistrate should not have accepted the evidence of the two former co-accused as they were accomplices and further that their evidence was unreliable. Furthermore the appellant submitted that as some of the vehicles were eventually exported to Namibia, albeit not to the purchasers for whom they were originally destined as per the original offers to purchase and invoices, no fraud had been proven.

Regarding sentence the appellant was sentenced to six (6) years' imprisonment with two years suspended on the 157 counts of fraud, after the counts were taken together for purposes of sentence. In respect of the count of corruption, he was sentenced to three (3) years' imprisonment. On the other hand the appellant's two former co-accused had been sentenced in terms of he plea bargain agreement by another court to a fine of R300 000 payable on instalments and upon default to imprisonment for five (5) years and a further imprisonment for five (5) years suspended for five (5) years on suitable conditions.

The appellant argued that the disparity in the sentences imposed on him as against the one imposed on his former co-accused is disturbing and unjustifiable. He submitted that fairness requires that the accused who have been convicted of the same offence(s) should receive the same sentence.

On appeal the Supreme Court of Appeal dismissed the appeal against the conviction on the basis that the state's evidence was overwhelming and reliable. Regarding the evidence of the accomplices, the trial court found that, notwithstanding the fact the two accomplices did not appear to have been perfect witnesses, they nonetheless told the court the substantial truth. The SCA could find no fault with this finding. Furthermore the SCA found that their evidence was amply corroborated by the evidence of other witnesses and some strong circumstantial and documentary evidence.

Regarding sentence, the SCA re-affirmed the legal principle that sentencing is pre-eminently a matter for the discretion of the sentencing court. Although the SCA found no misdirection on the part of the sentencing court, it found that the court below had not taken due and proper account of the cumulative effect of the sentences. In order to ameliorate the severity of the sentences the SCA ordered the sentence of three (3) years imposed in respect of corruption charge to run concurrently with the sentence imposed in respect of the 157 counts of fraud.

