**IN THE HIGH COURT OF SOUTH AFRICA**

**(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO: A307/2015

DATE: 28 OCTOBER 2016

In the matter between:

JACOBA HATTINGH — APPELLANT
(Accused 3 in the Court a quo)

and

THE STATE — RESPONDENT

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**JUDGMENT**

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**PARKER, AJ**

The appellant (accused 3 in the court *a quo)* was charged with two other accused. Accused 1 (appellant's son) and accused 2, who was discharged at the end of the State's case, are husband and wife. The appellant and her co-accused faced various charges of fraud, forgery and uttering, and theft, in total 42 counts.

These charges all stem from transactions during the period June 2007 to October 2008, involving accused 1, a certain C J K Hattingh ("Hattingh"), the appellant's husband and accused

1's stepfather, a Mr B van der Berg ("Van den Berg"), and the appellant. Accused 1 made misrepresentations designed to convince Hattingh, van der Berg and the appellant to pay a total of R1 200 000,00 (comprising of Hattingh's R500 000,00 Van der Berg's R200 000,00 and the appellant's R500 000,00 to him for him to invest on their behalf. Only Van der Berg's R200 000 was invested but later withdrawn by accused 1 and appropriated to himself, whilst the R1million of Hattingh and the appellant was not invested.

The appellant and her co-accused appeared in the Regional Court at Mossel Bay from October 2010, all pleading not guilty to all the charges on 31 May 2011. Accused 2 was discharged in terms of Section 174 of the Criminal Procedures Act, whilst accused 1 and the appellant were convicted on all 42 counts on 12 January 2015 and each sentenced to seven years imprisonment, the charges having been taken together for purposes of sentence.

The appellant now appeals to this Court against her conviction on all the counts as well as the sentence. Advocate P Botha who during the State's case in the court *a quo* took over appellant's representation continued to represent her before this Court. He has in rather comprehensive heads of argument and in this court argued that the appeal should be upheld. For

the respondent Advocate Jacobs has in her heads of argument conceded that the convictions of the appellant cannot be justified on the evidence on record and consequently conceded the appeal.

It must at the outset be noted that the expenditure of time and effort, and the cost to both parties, in particular the appellant, must have been considerable. Those include emotional as well as financial and material cost, given that the trial lasted for more than four years and up to this point has endured for six years from the time the appellant pleaded. The emotional turmoil of the appellant was significantly heightened by the fact that all this was initiated and caused by none other than her son. In the process she has not only lost her investment of R500 000 and more but has also been entangled in very acrimonious divorce proceedings, apparently due to a breakdown of her marriage to Hattingh, undoubtedly in large measure caused by these events.

## THE BACKGROUND

To understand how the above, rather unfortunate, scenario unfolded it is necessary to consider a synopsis of the history.

*Accused 1*

1. Accused number 1 was previously employed by Standard Bank. His employment there terminated under a cloud;

2. Thereafter claimed to be employed by Nedbank and as a result also claimed to be able to get very good returns on investments.

3. Convinced the appellant to pay him R500 000 for investment purposes. The appellant believing her son suggested to Hattingh, her husband, as well as their friend, Van der Bergh, to do likewise.

4. Appropriated all the money, that is the R1 200 000, to himself.

5. He started doing various "creative" things to hide the fact that he had misappropriated the money. He stole a cheque from Hattingh's chequebook and made out a cheque for the amount of R537 000, forged Hattingh's signature and deposited the cheque in appellant's account. He also deposited various cheques into the account of Hattingh which were all dishonoured. He transferred money from Hattingh's bond account to the latter's cheque account to make up for the withdrawal of

R537 000 which he had paid into the appellant's account.

6. The appellant, accepting that the R537 000 paid into her account was repayment of her investment plus interest, moved the money around. However, when it became apparent what accused 1 had done she promptly paid the money to Hattingh, from whose account this amount had by accused 1's fraudulent conduct, been paid into appellant's account.

7. Whilst also still believing that accused 1 was genuinely handling their investments Hattingh paid Van der Berg R230 000 being his investment of R200 000 plus interest of R30 000 when the latter became impatient for repayment of his investment.

8. Central to the determination of guilt or innocence of the appellant were considerations, *inter alia,* the following legal principles:

(a) The State bore the onus of proving the guilt of the appellant beyond reasonable doubt.

(b) There was no direct evidence against the appellant giving rise to the question whether the circumstantial evidence was sufficient to justify a conviction.

(c) The significance of the appellant's failure to give

evidence herself or call any witnesses.

(d) Whether or not the evidence could sustain a finding that the appellant had either formed a common purpose with accused 1 and/or was an accessory after the fact.

9. In order to prove the State's case the following were some of the witnesses who testified:

9.1 Charles Coetzee, an attorney, who testified about a letterhead of his firm which falsely reflected that the firm had received approximately R1.4million from Nedbank to be paid to accused 1.

9.2 P J Simon, a Nedbank employee.

9.3 Mr B van der Bergh, a complainant who paid R200 000 to accused 1to be invested;

9.4 N Fourie, a Standard Bank employee;

9.5 S A Muir, a Nedbank employee;

9.6 C J Hattingh, a complainant who also paid R500 000 to accused 1, for the latter to invest.

10. The two complainants (Hattingh and Van der Bergh) were recalled for further cross-examination by Advocate Botha, after he took over the defence of the appellant from Attorney Meyer, who until then represented all three

accused. When these complainants were recalled Hattingh in particular contradicted himself materially compared to the evidence he had given before, as well as the statements to the police.

11. In convicting the appellant, the Regional Magistrate

11.1 recognised that the case against the appellant was based on circumstantial evidence and proceeded to find as the only reasonable inference to be drawn from the relevant proved facts excluding every other reasonable inference that the appellant acted as a co-perpetrator and had been in cahoots with accused 1 from inception. His main reason for finding this was that, according to him various actions of accused 1 pointed a finger to the appellant.

11.2 Also found it significant that all three the accused had initially been represented by the same attorney, suggesting that the appellant must have given the same incriminating instructions as accused 1. His reasoning further being that there would have been a conflict of interest between accused 1 and the appellant resulting in the attorney not being able to represent all if the appellant had given exculpatory

instructions.

11.3 He laid great emphasis on the consequences of the appellant not having testified in responding to these fingers pointing at her. The scales, according to the magistrate tilted against the appellant purely because she did not testify as nothing else had changed from the time that he expressed serious doubt regarding her guilt when refusing her application for discharge at the end of the State's case. He stated on page 756 of the record:

> "The application is refused. I intended to go the other way, I changed my mind as I was going through the evidence. Strange experience."

(Dare I say indeed a strange experience.)

12. The Regional Magistrate made factually wrong findings when he, for example, found that there was no evidence that the appellant had also invested with accused 1. There was abundant evidence from Hattingh as well as Van der Bergh, that the appellant had also invested money. He seemed confused about whether she genuinely believed, as did Hattingh and Van der Bergh, that accused had invested her money, as opposed to

whether or not he had actually invested the money.

13. In fact the Regional Magistrate's misdirected reasoning is reflected in the fact that he had disregarded the rather strange if not somewhat bizarre evidence of Hattingh that he was convinced that the appellant was not involved and that accused 1 had acted on his own in defrauding them all until, as he said the Prosecutor not only suggested to him but convinced him that the appellant was complicit with accused 1. The State never led any evidence to show why it contended that the appellant was so involved with accused 1. Advocate Botha during cross-examination of Hattingh, when he was recalled, promised to unpack this aspect and prove that the prosecutor was misdirected when he prevailed on Hattingh that the appellant was complicit he did not deliver on this promise.

**APPLICABLE LEGAL PRINCIPLES**

14. In S v Glumaya 1948(2) SA 677 AD at 706 followed by Stryffer, AJA in Marks case number 397/2/004 delivered on 23 August 2005, the Supreme Court of Appeal held in relation to the procedure on appeal that:

"As die verhoorregter geen feitlike mistastings begaan het nie is daar 'n vermoede dat sy gevolgtrekking korrek is en dat 'n hof van appél slegs daarmee sal inmeng as hy oortuig is die bevinding verkeerd is. Verder dat 'n hof van appél nie angstig sal poog om redes te vind om met die verhoorregter se bevinding in te meng nie aangesien geen uitspraak alles omvattend kan wees nie en dit nie volg uit die feit dat as iets nie genoem word dit nie in ag geneem is nie."

15. In relation to the question of whether a factual misdirection was committed Davis, AJA held further in Glumaya *supra* that:

"There may be a misdirection on fact by the trial judge where the reasons are either on their face unsatisfactory or where the record shows them to be such. There may be such a misdirection also where though the reasons as far as they go are satisfactory he is shown to have overlooked other facts and probabilities. The Appellate Court is then at large to disregard his findings of fact even though based on credibility, in whole or in part, according to the nature of the misdirection and the

circumstances of the particular case, and so come to each own conclusions on the matter."

**CIRCUMSTANTIAL EVIDENCE**

16. When guilt is to be determined by way of inference the time on it and well-established test, as set out in Rex v Blom 1939 AD 188 at 202 to 203, must be adhered to. It would be useful just to attentively look at what the test is because the Regional Magistrate seemed to have some vague idea of what the exact test is but failed to apply it strictly to the facts of this case. He articulated his understanding of the test as follows in his judgment on page 1292 of the record:

> "Circumstantial evidence requires me to bear in mind that if I draw any inference it must be the only reasonable inference consistent with all the facts. I had the case in my head a moment ago and I just can't recall it for the moment. It doesn't really matter."

He was clearly thinking of the test in the case of Rex v Blom *supra* which is in fact the following:

"1. The inference sought to be drawn must be consistent with all the proved facts, if not the inference cannot be drawn;

2. The proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn. If they do not exclude other inferences then there must be a doubt whether the inference sought to be drawn is correct."

17. The following caveat of Lord Wright in Caswell v Powell Duffryn Associated Collieries Ltd 1939(3) All England Law Reports 722 at 733 quoted with approval in S v Essop and Another 1974(1) SA 1 (A) at 16D is appropriate:

"Inference must be carefully distinguished from conjecture or speculation. There can be no inference unless there are objective facts from which to infer the other facts which it is sought to establish. In some cases the other facts can be inferred with as much practical certainty as if they had actually occurred. In other cases the inference does not go beyond reasonable probability. But if there are no positive proved facts from which the

inference can be made the method of inference fails and what is left is mere speculation or conjecture."

18. When regard is had to the above test, and I look at the Regional Magistrate's reasoning to find that, on the available circumstantial evidence, the appellant's guilt was proved beyond reasonable doubt, then I'm constrained to conclude that such reasoning was fundamentally flawed. He paid lip service to the test and clearly indulged in speculation and conjecture, for example he commenced by saying Hattingh's evidence must be approached with caution as:

> "He has reason not be100% objective with regard to her. A further ground for caution in respect of Mr Hattingh is the way he testified when he was recalled. His answers ... were contradictory, he contradicted statements he made to the police, and they were troublesome to say the least."

Despite this warning to himself the Regional Magistrate still relied on the evidence of Hattingh as part of the "edifice to conclude that accused 3's presence and actions run like a gold thread right through the case", see page 1289 of the record.

19. If one looks at the evidence it is apparent that the actions of the appellant which to the court *a quo* were indicative of a guilty complicit role, were actually not so, her role in recommending to her husband and their friend to invest through accused number 1, as she was also intending to do, mentioning that her son would be able to get highly competitive interest on the investment was nothing more than a mother genuinely believing (maybe with hindsight somewhat naively so) that her son was capable of doing what he promised. It was despite serious attempts by the State not proved beyond reasonable doubt that she in any way conducted herself with a devious or criminal mindset.

20. In fact after much struggling by Advocate Botha during cross-examination of Hattingh the latter conceded that the appellant probably genuinely believed the lies spun by accused 1, and that she probably was unaware of what he was up to. See lines 22 on page 638 of the record and line 10 on page 640 of the record.

21. The Court *a quo* was simply factually incorrect in finding that the appellant was involved with accused 1 from inception and that she "lined up the people who were

going to make investments, procured them on accused 1's behalf and acted as if it were as a guarantor for accused 1 by saying how well he was doing and also by saying that she was going to make an investment". A reading of the evidence just does not sustain this inference.

22. The Court *a quo* further found that while Hattingh and Van der Bergh did in fact invest the appellant only said that she was going to invest but that there was no evidence that she in fact did.

The evidence just does not support the above findings and in some instances the findings constitute a skewed interpretation of the evidence. It is for example an unjustified nuance that there is no evidence that the appellant also invested. When both Hattingh and Van der Bergh testified that she had given R500 000 to accused 1 to invest on her behalf and that she also like them received "investment certificates", in fact Ms Meer of Nedbank testified that both Hattingh and the appellant together came to see her on 12 November 2008 about their respective investments.

23. The evidence that the appellant had gone through the process of submitting a complete set of application forms

for the investment, together with the supporting FICA documents also does violence to the Regional Magistrate's finding that the appellant was in cahoots with accused 1 from inception, as she would certainly not have gone to all this trouble if she was an accomplice.

24. In the circumstances it is clear that that the Regional Magistrate misdirected himself materially with reference to his application of the test in determining the appellant's guilt by way of inference drawn from all the relevant and proved facts. Instead the Regional Magistrate resorted to conjecture and speculation which is not permissible.

25. The Regional Magistrate also misdirected himself when he, again speculatively suggested that the appellant could not have been in the same position as Hattingh and Van der Bergh as a complainant, simply because she initially had the same attorney as accused 1 and 2. He adopted this approach despite the fact that the appellant is not a legally trained person who fully explained in her sworn affidavit in support of an application to having Hattingh and Van der Bergh recalled to be cross-examined by Advocate Botha how she innocently and unaware of the notion of a conflict of interest with

accused 1 came to instruct the same attorney. Dare I say this evidence was in no way challenged by the State. The evidence I refer to is what she had said in her sworn affidavit.

26. In similar vein the Regional Magistrate misdirected himself in finding that when accused 1 paid a cheque he had stolen out of Hattingh's chequebook into appellant's banking account he "pointed a finger" in her direction. This was despite accused 1's unchallenged evidence that the appellant did not know that he had either stolen the cheque and/or paid it into her account.

27. The Regional Magistrate's reasoning becomes even more flawed, if not bizarre, if regard is had to the fact that according to him the appellant was to be found guilty as an accomplice on all 42 counts, even those involving the forgeries and the uttering relating to documents falsely created and/or completed by accused 1. The latter's evidence that the appellant knew nothing about him committing these deeds is completely ignored. I am aware that accused 1 was correctly described as a very poor and dishonest witness whose evidence cannot be relied upon unless corroborated by other evidence, however it is a fact that if a witness is found to have lied

about some aspects it does not necessarily mean that he cannot be believed about the rest of his evidence. In fact his lies were clearly confined to covering his own criminal conduct. His uncontroverted evidence was that he had misled the appellant.

28. The *maxim falsus in unum, falsus in omnibus* is not tenable and has been described as unreliable and illogical by the Court in R v Gumede 1949(3) SA 749A to 756. In this regard also see S v Oosthuizen 1982(3) SA 571 T at 576H to 577D.

29. The Regional Magistrate's reasoning that the Appellant had formed a common purpose with accused 1 and/or acted as an accessory after the fact is equally flawed and constitutes a material misdirection.

30. The essence of doctrine of common purpose is that if two or more people having a common purpose to commit crime act together in order to achieve that purpose then the conduct of each of them in the execution of that purpose is imputed to the others. See Criminal Law by C R Snyman, 6th Edition pg 257, and see also S v Shaik 1983(4) 57A at 65, and S v Safatsa 1988(1) SA868 AD at 894, 896 and 901. S v Mgedezi and Others 1989(1) SA

687 (A), affirmed in S v Thebus and Another 2003(2) SACR 391 CC and lastly S v Mzwempi 2011(2) SACR 237 ECM.

31. The development of the doctrine through case law reveals that common purpose embodies two stages, the first stage being the prior agreement or act of association of the persons, the second stage imputes conduct on an accused which falls within the common design or purpose, see Mzwempi *supra*.

32. In this case it cannot be said that the prerequisites to establishing such agreement are proved if the prior agreement cannot be established as a fact the second stage of the enquiry is not activated. These pre-requisites as crystallised in the decision of S v Mgedezi *supra* can be summarised as follows and would require the appellant to have been:

32.1 Present at the scene where the offences were committed. In *casu* there is no reliable evidence that the appellant was present when accused 1 was conducting himself criminally with reference to either procuring the money by falsely misrepresenting that he was going to invest it, by

forging documents and making false utterings, by stealing Hattingh's cheque and depositing it into appellant's account, by depositing various cheques into the accounts of both Hattingh and the appellant which cheques kept on being dishonoured etcetera.

32.2 Aware of the commission of the offences by the accused. Again there is no evidence capable of sustaining the inference that the appellant was aware that accused 1 was committing these offences.

32.3 Intended to make common purpose with accused 1 committing the crimes.

32.4 Manifested her sharing of a common purpose by performing some act of association with the particular conduct of accused 1, and had the intention to commit the offences embodied in the 42 charges against her.

All of the above prerequisites are not satisfied if regard is had to the general matrix of the evidence.

33. In relation to the further reasoning of the Regional

Magistrate must be noted that it can only be found that a person is an accessory after the fact to the commission of a crime if after completion of a crime she unlawfully and intentionally engages in conduct intended to enable the perpetrator of, or an accomplice in the crime, to evade liability for the crime or to facilitate such a person's evasion of liability. See S v Xhoza 1982(3) SA 1019 (A) 1040C, and also see S v Williams 1998(2) SACR 191 (SCA) 193c-e.

34. If the above definition is applied to the evidence in this case it is apparent that the appellant could and should not have been treated as an accessory after the fact as was suggested by the State and seemingly agreed to by the Court *a quo*. In his judgment the Regional Magistrate found that the appellant had participated in the process of delaying payment or to play for time by various actions on her part. The appellant was also found by the Court to have assisted as an accomplice and even after the accused had committed the offences embodied in some of the counts as an accessory after the fact. There is simply no evidence that she did this.

35. It is clear that accused number 1 should not have been found guilty of some of the counts and therefore

appellant could not have been properly convicted of those counts, either as an accomplice or as an accessory after the fact.

36. For convenience the charges may be grouped as follows:

36.1 Count 1, the fraud of R200 000 relating to Van der Bergh. Accused 1 interacted directly with the complainant to secure this investment;

36.2 Counts 2 to 6, forgeries, and counts 7 to 11, utterings. Accused 1 forged these documents on his own and sent them to Van der Bergh;

36.3 Count 12, fraud relating to Hattingh's investment of R500 000. This investment was made on information the complainant got from accused 1, who alone made these representations to both this complainant and by the way appellant to also secure her investment of R500 000;

36.4 Counts 13 to 21, fraud relating to cheques paid into the account of Hattingh which cheques were dishonoured. Similar cheques were also paid into the appellant's account.

36.5 Count 22, theft of R537 000 and counts 23 and 24 the forgery and relating to this cheque. This entire process of stealing the cheque, paying it into appellant's account, transferring an amount from Hattingh's bond account to the account in respect of which the cheque had been stolen was embarked upon and executed by accused 1 alone. There is no reliable and acceptable evidence that the appellant had in any way been complicit in any of these actions, as was in fact conceded by Hattingh, and then lastly;

36.6 Counts 25 to 33 the forgery of documents and counts 34 to 42 uttering in respect of these documents. Accused 1 forged these documents and presented them without any involvement on the appellant's part.

37. An accomplice is someone who does not satisfy all the requirements for liability as a perpetrator in terms of the principles of common purpose, but who nevertheless unlawfully and intentionally furthers its commission by somebody else. She constantly associates herself with the commission of the crime by assisting the perpetrator

or by giving the latter advice or by supplying information or by offering her the opportunity or means to commit the crime or to facilitate its commission. See S v Williams 1980(1) SA 610 (A) and Criminal Law, C R Snyman at 250 to 251.

38. Also central to the Magistrate's reason for convicting the appellant was the fact that she had not testified in her defence or called any witnesses. He attached much weight to this fact and made an adverse finding relating thereto against the appellant.

39. The effect of an accused failure to testify was previously governed by rules that were crystallised in S v Mthethwa 1972(3) SA 766A at 768 A-E. However the advent of the constitution gave rise to the question of whether these rules are reconcilable with an accused's constitutionally guaranteed right to refuse to testify at his own trial. In a post constitution case on the point, namely S v Brown 1996(2) SACR 49 NC Buys, J *inter alia* argued that:

> "No adverse inference can be drawn against an accused merely by virtue of the fact that he has exercised his constitutional right to refuse to testify. It can no longer be argued or held that

silence *ipso facto* strengthens a *prima facie* State case based on direct evidence."

40. In S v Saul 2004(2) SACR 599 Lesotho High Court at 648 Cullinan, AJ said:

"No adverse inference should be drawn from the accused silence in the sense that it is an evidential item bolstering the Crown case and it certainly cannot draw defects in the Crown's case."

41. I have looked at and considered the authorities referred to by Advocate Botha in the appellant's heads of argument dealing with her failure to testify. These authorities as a central theme underline the principle that an accused silence does not relieve the prosecution of its duty to prove the guilt of an accused beyond reasonable doubt.

42. In S v Brown *supra* at 659 at 659 it was pointed out that:

"In the absence of an account given by the accused the Court will decide the case on the prosecution's version."

43. If regard is had to the facts pointed out above with reference to the analysis of the 42 counts in dissecting the prosecution's version then it is apparent that the State failed to prove a *prima facie* case against the appellant, and therefore she did not have to testify. This is so particularly if cognisance is taken of the various concessions that were made in favour of the appellant during cross-examination of the State witnesses. Such concessions then formed part of the evidence which undermines the State's effort to make out a *prima facie* case against the appellant.

44. It therefore also means that an accused does not need to testify about aspects covered by such concessions.

45. In establishing whether or not the State proved its case beyond a reasonable doubt I have had regard to what was said in S v Van Aswegen 2001(2) SACR 97 (SCA) where the Court relied on the following passage in S v van der Meyden 1999(1) SACR 447 (W) at 449g, for its decision that the Court should not base its decision on whether to convict or acquit on only a portion of the evidence but that the decision had to take into account all the evidence, and here I am making reference to the

concessions and the failure to take those concessions into account.

> "The proper test is that an accused is bound to be convicted if the evidence establishes his guilt beyond reasonable doubt, and the logical corollary is that he must be acquitted if it is reasonably possible that he might be innocent. The principles of reasoning which is appropriate to the application of that test in any particular case will depend on the evidence which the Court has before it. What must be borne in mind however is that the conclusion which is reached (whether it be to convict or to acquit) must account for all the evidence. Some of the evidence might be found to be false, some of it might be found to be only possibly false or unreliable but none of it may simply be ignored."

And as I said the Regional Magistrate clearly ignored much evidence which favoured the appellant.

46. In this case the Regional Magistrate simply ignored the material concessions made by the State witness in favour of the appellant.

47. I am mindful of the submissions made by Advocate Jacobs about why the respondent could not justify the convictions of the appellant on the evidence on any of the counts. We are obviously not bound by these submissions but they demonstrate that it is not the task of the prosecution to secure a conviction at all costs. Regrettably the same cannot be said about the prosecutor in the court below. In this regard see S v Macrae 2014(2) SACR 215 (SCA) at para 28:

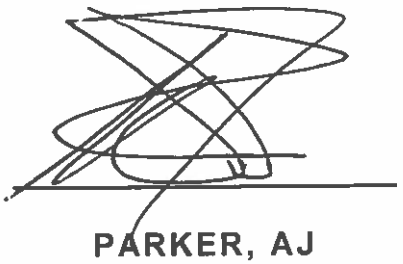
> "It needs to be stressed once again that the duty of prosecutors is not to secure a conviction at all costs or to defend convictions once obtained. Their duty is to see that, insofar as is possible, that justice is done."

As Jones, J expressed it in S v Fani and Others 1994(1) SACR 635 (E) at 638e-f:

> "The object of criminal proceedings in our law has never been to secure a conviction at all costs. The duty of the prosecution is to present all the facts in an objective and fair manner so as to place the Court in a position to arrive at the truth. Where an appeal is being argued as one expects the

prosecutor to do in an objective and fair manner and if satisfied that the conviction is flawed to draw that to the attention of the Court, particularly where the flaw goes to the heart of the fairness of the trial at which the accused person was convicted."

48. For the above reasons I would thus **UPHOLD THE APPEAL AND SET ASIDE THE APPELLANT'S CONVICTION ON ALL THE COUNTS AND SENTENCE**.



**PARKER, AJ**

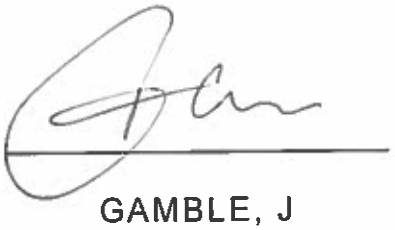
I note the presence in court today of a number of interested persons who obviously are here to support the appellant. They must have driven far to do so. Indeed we do not often see this level of interest in matters on appeal. The courts are very often empty with only the legal representatives present. In the unusual circumstances of this matter I feel constrained to make the following brief remarks.

What occurred in this matter was a complete travesty of justice. The prosecutor was driven by undue zeal to secure a conviction, the appellant was *prima facie* poorly represented by her first legal representative, an unfortunate situation which the Regional Magistrate seized upon and unfairly held against the appellant, suggesting that she must have lied to her lawyer, rather than perhaps looking at the latter's professional competence.

Finally the Regional Magistrate having manifestly had a change of heart while delivering his ruling on the Section 174 application proceeded to deliver a judgment which can only be described as shambolic, it reflects a stream of consciousness, rather than a carefully thought through and reasoned judgment. A collection of thoughts and ideas which do not complete the mosaic necessary to secure a conviction in this matter, simply put it is an aberration, and all the while the appellant, a mature woman in her sixties, has had to endure the angst that accompany such a predicament. Little wonder then that lay people resort to maxims attributing to law asinine characteristics. A matter such as this does nothing to engender faith in our justice system. Prosecutors must be reminded again that it is their function to present evidence with the objective only of pursuing the truth, they do not pursue convictions at all costs.

Presiding Officers owe it to the public to properly apply their minds to cases before them, and to deliver judgments which are reasoned and comprehensible, both for the purposes of the accused before them and for Courts sitting on appeal later.

I agree with my colleague that the appeal should be upheld and in the circumstances the CONVICTIONS ALL COUNTS AND THE SENTENCE IS TO BE ASIDE. The registrar is directed to furnish a copy of this judgment to the President of the Regional Court Cape Town and to the Director of Public Prosecutions Cape Town.



GAMBLE, J