

SOUTH AFRICA / JUDGMENT

Mmethi v S (A19/2020) [2021] ZAGPPHC 101 (25 February 2021) [2021] ZAGPPHC 101

COURT

North Gauteng High Court, Pretoria

BEFORE

N Davis, S A M Baqwa

CASE / FILE NUMBER

A19/2020

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HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

- (1) REPORTABLE: NO.
- (2) OF INTEREST TO OTHER JUDGES: NO.
- (3) REVISED.

DATE: 25 FEBRUARY 2021

CASE NO: A19/2020

In the matter between:

KGABO JOHANNA MMETHI

Appellant

and

THE STATE

Respondent

J U D G M E N T

This matter has been heard in terms of the Directives of the Judge President of this Division dated 25 March 2020, 24 April 2020 and 11 May 2020. The judgment and order are accordingly published and distributed electronically.

DAVIS, J

[1]

Introduction

1.1 This is the judgment in an appeal against conviction and sentence by one of an initial set of four accused, all charged with defrauding the Compensation Fund, which fund is established in terms of the Compensation for Occupational Injuries and Diseases Act, no 130 of 1993.

1.2 The appellant was found to have acted in common purpose with two of her co-accused on three charges of fraud, totaling R467 150,

58. She was sentenced on 4 December 2018 to 6 years imprisonment on each of the three charges, which sentences were ordered to run concurrently.

1.3 Leave to appeal was refused in the court a quo but granted on petition on 29 October 2019.

[2] The record

2.1 It is common cause that there are deficiencies in the record. This prompted counsel for the State to move for a postponement of the matter. The appellant was, however, anxious to have the appeal finalised, despite these deficiencies.

2.2 The appellant's attorney has filed a substantial and very detailed affidavit wherein he not only meticulously identified the deficiencies in the record, but also the various and numerous steps taken in an attempt to complete the record. This included requests made to the appellant's previous counsel, the prosecutor, the clerk of court, the transcribers and the office of the Director of Public Prosecutions, all to no avail. In the end, he concluded that the state of the record is as good as it is ever going to get.

2.3 After some debate about this issue during the hearing of the appeal, we ruled that the appeal should proceed, in the interests of justice, despite the deficiencies in the record. In making this ruling, we were mindful of the delay in finalising the matter, the nature and extent of the deficiencies as well as the judgments in *S v Chabedi* 2005 (1) SACR 415 (SCA) and *S v Schoombee* 2017

(2) SACR 1 (CC).

2.4 We also had, in making the aforesaid ruling, regard to the merits of the appeal. From this, as more fully set out hereunder, the reasons for allowing the appeal to proceed, will become even more clear.

[3] The factual

background

3.1 There was little dispute about the process applied at the Compensation Fund's offices when claims by healthcare practitioners are processed. In short, it is the following:

3.1.1 After a practitioner has treated a patient for a condition or injury sustained due to a workplace-related accident, the practitioner's invoice is submitted to the fund. Often this is done in person.

3.1.2 Upon receipt of the pro forma invoice from a practitioner, it will be stamped, registered and assigned a claim number. The invoice is then transferred to a store-room (known as a "strongroom").

3.1.3 A supervisor will then from time to time collect batches of invoices, which will now become claims, and allocate them to "capturers" and later to "preparers". Each preparer will then "prepare" the claims, by comparing the information contained therein, such as employee and employer particulars with the information "on the system" wherein workplace-related accidents have been logged.

3.1.4 From the "preparers", a claim proceeds to an "approver". An approver checks and whether the applicable codes for the procedures performed had been assigned in accordance with the system of codes published from time to time in the Government Gazette.

3.1.5 After approval, the claims proceed to the payment stage. Payments are made in bulk and directly to healthcare practitioners' bank accounts.

3.1.6 At each stage, every official dealing with a claim, whether it be a capturer, preparer or approver, logs onto the electronic system by way of an identifying password. It is therefore possible to ascertain after the fact who had performed each respective task.

3.2 At the behest of the Compensation Commissioner, forensic investigations into the payment of claims by the Compensation Fund during the period 2006 to 2009 were initiated. A certain Mr Beukes from PKF Auditors was appointed as one of the investigators. He conducted forensic investigations in conjunction with an Information Technology (IT) specialist, Ms Merrington. Together they extracted data from the Compensation Fund's records and compiled a schedule of payments (in the form of a spreadsheet) made into the bank accounts of various practitioners, including a physiotherapist, Mr M. J. Mudau.

3.3 From the evidence of Mr Beukes, Ms Merrington and Mr Mudau the following history became apparent: Mr Mudau had accompanied a fellow physiotherapist from Rustenburg to the Compensation Fund's offices in Pretoria early in 2009. Mr Mudau's purpose was to submit legitimate claims. In the parking lot of the Fund's offices, the colleague telephoned someone who came out to meet them. These persons were the first and second accused. During the return trip on the way to Rustenburg Mr Mudau's colleague explained that the two gentlemen which he had introduced to Mr Mudau in the parking lot, can "facilitate" payments via the Fund. The scheme worked like this: a practitioner would submit fraudulent claims for non-existent patients or over-inflated invoices for actual but often minor treatments in respect of actual reported workplace related accidents. Accused no's 1 and 2 would see that these claims were processed and paid out. Afterwards, the practitioner, in this case, Mr Mudau and accused no's 1 and 2 would divide and share the spoils. This actually took place in respect of the claims set out in the investigators'

spreadsheet referred to earlier. Mr Mudau thereafter effected payment from his bank account into accounts designated by the said other two accused.

3.4 It was as a result of his participation in the scheme that Mr Mudau was initially charged together with the appellant and her two co-accused, but early on, the proceedings against him were separated. He proceeded to plead guilty and was sentenced in separate proceedings. Hereafter he became a witness in the appellant's trial.

3.5 The factual matrix summed up above, had been confirmed by Mr Mudau in evidence in the trial of accused no's 1 and 2. The appellant was accused no 3 in the trial.

[4] The involvement of the appellant

4.1 The reasons why the appellant had been charged as a co-accused in the scheme ran by the other accused, were two-fold: firstly, she had been the "preparer" in respect of some of Mr Mudau's claims and secondly, she was generally assigned to prepare claims for healthcare practitioners from Gauteng and not from North-west province, in which province Mr Mudau had his practice.

4.2 The appellant had testified in her own defence. She explained that, although she generally prepared claims for Gauteng practitioners, she from time to time prepared claims for practitioners from other provinces, depending on what invoices the supervisor allocates to her. Insofar as she may have "prepared" invoices incorrectly when she compared them to the data on the system, she conceded that she may have done so erroneously. This was done as a result of the high workload in order to try to accommodate the Fund's backlog of claims.

4.3 In all other instances or claims which formed the subject matter of the charges, accused no 2 had been the preparer. In respect of all the claims, whether prepared by accused no 2 or the appellant, accused no 1 (who had left the employ of the Compensation Fund by the time Beukes had completed his investigations), was the "approver". It was accused no 1's "approval" in each instance which led to payment of the amounts in question to Mr Mudau.

4.4 Was the appellant an innocent cog in the other accused's fraudulent machinery? Mr Mudau had never even met her and made no reference to her in his plea of guilty, although he expressly implicated the other two accused. When cross-examined about this aspect, he confirmed that he could not and did not implicate the appellant.

4.5 The learned magistrate has meticulously summed up the evidence, including that of Beukes and Merrington and a friend of accused no 1, who operated a driving school in conjunction with him into which school's bank account accused no 1's "split" was paid in as well as a nursing sister who was employed by the Compensation Fund and who explained and confirmed the claims processes and the allocated codes for certain medical procedures. This summary by the magistrate covered evidence which would have been contained in the missing parts of the record. In none of these summaries were the appellant implicated other than her role as preparer of some of the claims as already referred to above.

4.6 A most telling point in favour of the appellant, was the absence of any evidence that she had shared in any of the spoils of the fraudulent scheme. The magistrate therefore found her not guilty on charges 4 – 9, being money-laundering charges in respect of which the other accused (and Mr Mudau) had been found guilty of.

4.7 It is difficult to appreciate exactly on what basis the learned magistrate, having found that the appellant had played no part in the sharing of the money obtained by way of the submission of fraudulent claims and did not benefit thereby, then found that the appellant had acted in common purpose with the other perpetrators.

[5]

Conclusion

In our view, it has not been proven beyond reasonable doubt that the appellant had been part of the fraudulent scheme. The appeal should therefore succeed.

[6] Order:

I propose that the following order be made:

1. The appeal is upheld.
2. The appellant's convictions on charges 1, 2 and 3 and the sentences imposed in respect thereof, are set aside.

N DAVIS

Judge of the High Court

Gauteng Division, Pretoria

I agree and it is so ordered.

S. A. M BAQWA

Date of Hearing: 26 January 2021

Judgment

delivered: 25 February 2021

APPEARANCES:

For the Appellant: Adv. M Bouwer

Attorney for Appellant: Du Toit Attorney, Pretoria

For the Respondent: Adv J P Krause

Attorney for Respondent: Director of Public Prosecution, Pretoria

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Prepared on 11 October 2026 · Esheria