

SOUTH AFRICA / JUDGMENT

Preston and Another v S (A68/2011)

[2011] ZAGPJHC 221 (20 October 2011)

[2011] ZAGPJHC 221**COURT**

South Gauteng High Court, Johannesburg

BEFORE

Meyer, Makhanya

CASE / FILE NUMBER

A68/2011

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IN SOUTH GAUTENG HIGH COURT

JOHANNESBURG

Case No:(A68/2011)

Date:20/10/2011

N.P. PRESTON.....FIRST APPELLANT

S.P. BADENHORSTSECOND APPELLANT

vs

THE STATERESPONDENT

JUDGMENT

MEYER, J

[1] The first appellant was convicted of 113 counts of fraud committed during the period September 2003 to August 2006 and the second appellant of 91 counts of fraud committed during the same period.

[2] The first appellant was an employee of a company called Aranda Textile Mills (Pty) Ltd ('Aranda') during the period of about 3 years when the fraud was committed and the second appellant a former employee. The two of them set upon a fraudulent course of conduct by which they defrauded Aranda with amounts that totalled up to an amount of about R 5, 3 million.

[3] The first appellant was sentenced to 15 years' imprisonment and the second appellant to 12 years' imprisonment. All the charges against each appellant were taken together for the purpose of sentencing her. Each appellant now appeals against such sentence that was imposed upon her.

[4] The trial court, in my view, materially misdirection itself in the imposition of sentence in each instance. The sentence imposed upon

each appellant, when all the circumstances of the particular case of each appellant are considered, is disproportionate to the crimes committed by her, the criminal in each instance, and the legitimate needs of society. The trial court, in my view, further materially misdirected itself in finding an absence of sincere remorse on the part of appellant no 2. She took the court a quo into her confidence as to her motives in commissioning the crimes, as to what provoked her change of heart, and it appears clearly from the evidence presented that she indeed has a true appreciation of the consequences of her actions. See *S v Matyityi* 2011

(1) SACR 40 SCA, para [13].

[5] This court is accordingly at large to consider the matter of each appellant's sentence afresh. In doing so the traditional objectives of punishment – prevention, retribution, deterrence, and rehabilitation – apply, and we are enjoined to weigh the personal circumstances of each accused (including the interests of their minor children), against the crimes committed by them, and the interests of society.

[6] I am of the view that the court a quo correctly differentiated between the sentences imposed upon the appellants. The imposition of sentences of lengthy periods of imprisonment is, on a consideration of all the circumstances, also just and warranted. An appropriate and balanced sentence, which is also blended with mercy, in the case of appellant no 1 is, in my judgment, imprisonment for a period of twelve years, and in the case of appellant no 2, imprisonment for a period of 9 years.

[7] In the result, I propose that the appeal of each appellant against her sentence should succeed and that the following order be made:

1. The sentence of fifteen years' imprisonment imposed upon appellant no 1 is hereby set aside and replaced with a sentence of twelve years' imprisonment.
2. The sentence of twelve years' imprisonment imposed upon appellant no 2 is hereby set aside and replaced with a sentence of nine years' imprisonment.

MAKHANYA, J

[8] I agree with my brother Meyer, J.

[9] It is so ordered.

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Prepared on 11 October 2026 · Esheria