

SOUTH AFRICA / JUDGMENT

S v Hlungwani (A154/2024) [2025] ZAGPPHC 645 (12 June 2025)

[2025] ZAGPPHC 645**COURT**

North Gauteng High Court, Pretoria

BEFORE

SSE Sambo, MPN Mbongwe

CASE / FILE NUMBER

A154/2024

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IN THE HIGH COURT OF
SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
CASE NUMBER A154/2024
In

the matter between:

THE
STATE
APPELLANT
and
TIYANI
HLUNGWANI
RESPONDENT

JUDGMENT

Sambo AJ (Mbongwe J concurring):

- [1] This is an appeal in terms of Section 310 of the Criminal Procedure Act 51 of 1977.
- [2] The Respondent and three other co-accused, were tried in the Specialized Commercial Crime Court, Pretoria, facing several charges. The Appellant alleged that all the accused acted with a common purpose in committing the offenses. In particular, the Respondent was charged with the following offences:

- (a) fraud read with Section 51(2) of Act 105 of 1997 in that between 14 and 23 June 2017 and at or near Irene in the Regional Division of Gauteng, he unlawfully and falsely and with intent to defraud gave out and pretended to certain officers of the Crime Intelligence Division of the South African Police Service that there was an urgent need to secure catering services for a meeting of senior police officers which justified the deviation from normal procurement processes and payment of an advance into the personal account of one of the accused, to the prejudice of the Crime Intelligence Division and/or the general public;
 - (b) fraud read with Section 51(2) of Act 105 of 1997 in that on 27 June 2017 and at or near Irene in the Regional Division of Gauteng, he unlawfully and falsely and with intent to defraud gave out and pretended to certain officers of the Crime Intelligence Division of the South African Police Service, in particular General Obed Nemutanzhela, that a claim by accused 2 for the expenses she incurred for catering services during the crime intelligence meeting of 21 until 23 June 2017 was legitimate and that the deviation letter that was attached to the claim was signed on 19 June 2017 before the advance was paid into accused 2's bank account, to the prejudice of the Crime Intelligence Division and/or the general public whereas when the accused gave out and pretended as aforesaid they knew very well that in truth and in fact the submitted claim was not legitimate and that the deviation letter was written and signed on 29 June 2017 at the insistence or advice of the Respondent; and
 - (c) contravention of Section 21 read with Sections 1, 2, 26(1)(b) of the Prevention and Combating of Corrupt Activities Act 12 of 2004 and further read with Section 51(2) of Act 105 of 1997 in that between 14 and 28 June 2017 and at or near Irene in the Regional Division of Gauteng, he unlawfully and intentionally aided Pat Mokushane and Leonora Phetlhe in contravening Sections 4(1)(a) and (b) of Act 12 of 2004.
- [3] During the trial, the Appellant called nine (9) witnesses and at the conclusion of the State's case, the Respondent applied for a discharge in terms of Section 174 of the Criminal Procedure Act 51 of 1977. The application was granted and the Respondent was found not guilty and discharged in respect of all the three charges that he had pleaded not guilty to.
- [4] It is as a result of the above-mentioned outcome that the present appeal came before this Court.
- [5] In the Notice of Appeal in terms of Section 310 of the Criminal Procedure Act and during the submissions before the Court, Counsel for the Appellant argued that the acquittal of the Respondent on the basis that there is no evidence upon which a Court acting cautiously can convict constitutes a question of law.
- [6] It is common cause that the need for the catering services arose at the latest on 14 June 2017 and that in terms of the applicable prescripts, 48 hours or more was sufficient to source out three quotations. However, the accused waited until 19 June 2017 before getting the process of procuring the required services underway.

- [7] The uncontradicted testimony of one of the State witnesses, Ms Nolwande Boya, was that the Respondent asked her to type a deviation letter which stated the reason for the deviation as being due to the urgency of the meeting, it being alleged that the process of seeking 3 quotations was not feasible. Ms Boya's evidence that the deviation letter was only written on 29 June 2017 and backdated to 19 June 2017 at the insistence of the Respondent was also not challenged.
- [8] Counsel for the Appellant further submitted that the Regional Court erred in finding that paragraph 3.3.3 of the National Treasury Practice Note 8 of 2007/2008 dated 29 November 2007 does not specify when written reasons for deviation should be provided and that, as such, the reasons could be provided after the fact. In this regard, we were referred to Paragraph 1 of the National Treasury Practice Note which indicates the purpose thereof as being to regulate the threshold values within which accounting officers/authorities may procure goods, works and services by means of petty cash, verbal/written price quotations in accordance with the Public Finance Management Act. In terms of Paragraph 3.3

"3.3.1 Accounting officers/authorities should invite and accept written

price quotations for requirements up to an estimated value of R500 000.00 from as many suppliers as possible, that are registered on the list of prospective suppliers;

3.3.2 Where no suitable suppliers are available from the list of prospective suppliers, written price quotations may be obtained from other possible suppliers;

3.3.3 If it is not possible to obtain at least three (30 written price quotations, the reasons should be recorded and approved by the accounting officer/authority or his/her delegate."

- [9] It is trite that the principles applicable to the interpretation of written documents is that the primary meaning of any document must be determined from the language in accordance with the well-known rules of interpretation. In *Capitec Bank Holdings Limited and another v Coral Lagoon Investments 194 (Pty) Ltd and Others*[1] the Court elaborated as follows:

"It is the language used, understood in the context in which it is used, and having regard to the purpose of the provision that constitutes

the unitary exercise of interpretation. I would only add that the triad of text, context and purpose should not be used in a mechanical

fashion. It is the relationship between the words used, the concepts expressed by those words and the place of the contested provision

within the scheme of the agreement (or instrument) as a whole that constitutes the enterprise by recourse to which a coherent and

salient interpretation is determined. As Endumeni emphasised, citing well-known cases, '[t]he inevitable point of departure is the language of the provision itself'."

[10] In light of the above principles of interpretation, I agree with the submission by Counsel for the Appellant that a purposive interpretation of the above extracts from the National Treasury

Practice Note is to the effect that the reasons for the deviation should be approved before any payment may be paid. Otherwise, it would serve no purpose for the reasons to be provided at any state because there of the risk that may befall government institutions if money was to be spent and for reasons that are without any sound basis.

[11] It was further contended that the Regional Court erred in finding that because there was no evidence that the Respondent benefitted from the money that was allegedly stolen, the charge of fraud cannot succeed against him. Counsel submitted, correctly in my view, that the elements of fraud do not require that an accused person should benefit from the unlawful transaction. As long as the state can prove the misrepresentation and prejudice, there is a prima facie case to which the accused must answer.

[12] I fully agree with what was stated in S v Boesak[2] where the Court said once a prima facie case is made demanding answers from an accused, disputes by mere cross examination cannot suffice, unless same is repeated as evidence under oath and tested through cross examination. The evidence that was presented by the State before the Regional Court is sufficient to call for an answer.

[13] In the result I propose the following order:

- (a) The appeal against the acquittal and discharge of the Respondent on 08 November 2023 is upheld.
- (b) The acquittal and discharge are hereby set aside.
- (c) The matter is referred back to the Regional Court for continuation of the trial against the Respondent.

SSE SAMBO

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION

I agree. It is so ordered.

MPN MBONGWE

JUDGE OF THE HIGH COURT

APPEARANCES

For the Appellant: Adv M.A. Masekoameng Instructed by: Director of Public Prosecutions,
Pretoria For the Respondent: No appearance Heard: 11 June 2025 Judgment delivered: 12 June
2025

[1] 2022 (1) SA 100 (SCA) at Paragraph [25]

[2] [2000] ZACC 25; 2001

(1) SA 912 (CC) at p 914 para A-D

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