

SOUTH AFRICA / JUDGMENT

S v Scholtz (K/S 20/2013) [2016] ZANCHC 90 (6 December 2016) [2016] ZANCHC 90

COURT

Northern Cape High Court, Kimberley

BEFORE

Phatshoane

CASE / FILE NUMBER

K/S 20/2013

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IN THE HIGH COURT OF SOUTH AFRICA

[NORTHERN CAPE DIVISION, KIMBERLEY]

CASE NO: K/S 20/2013

In the matter between:

THE STATE

And

ALFEUS CHRISTO SCHOLTZ

ACCUSED NO 1

TRIFECTA INVESTMENT HOLDINGS (PTY)

ACCUSED NO 2

TRIFECTA HOLDINGS (PTY) LTD

ACCUSED NO 3

TRIFECTA TRADING 434 PROPERTY 4 (PTY) LTD

ACCUSED NO 4

TRIFECTA TRADING 434 PROPERTY 5 (PTY)

ACCUSED NO 5

TRIFECTA TRADING 434 PROPERTY 7 (PTY) LTD

ACCUSED NO 6

TRIFECTA TRADING 434 PROPERTY 11 (PTY) LTD

ACCUSED NO 7

JOHN FIKILE BLOCK

ACCUSED NO 9

CHISANE INVESTMENT (PTY) LTD)

ACCUSED NO 10

Date of hearing: 29 September 2016

Date delivered: 06 December 2016

SENTENCE:

Phatshoane J

[1] On 13 October 2015 the nine accused, Mr Alfeus Christo Scholtz and the six Trifecta Group of Companies (the Trifecta GOC) together with Mr John Fikile Block and Chisane Investment (Pty) Ltd, were convicted on various counts of corruption and money laundering as follows:

1.1 Mr Alfeus Christo Scholtz, Accused No 1, was found guilty on the following Counts of corruption and money laundering: Count 8; Count 16, Count 34 and count 35;

1.2 Trifecta Investment Holdings (Pty) Ltd, Accused No 2, was found guilty on the following Counts of corruption and money laundering: Count 8 and Count 34;

1.3 Trifecta Holdings (Pty) Ltd, Accused No 3, was found guilty on the following Counts corruption and money laundering: Count 8, Count 16, Count 34, and Count 35;

1.4 Trifecta Trading 434 Property 4 (Pty) Ltd, Accused No 4, was found guilty on Count 8, corruption;

1.5 Trifecta Trading 434 property 5 (Pty) Ltd, Accused No 5, was found guilty on Count 8, corruption;

1.6 Trifecta Trading 434 Property 7 (Pty) Ltd, Accused No 6, was found guilty of corruption, Count 8;

1.7 Trifecta Trading 434 Property 11 (Pty) Ltd, Accused No 7, was found guilty on Count 8, corruption;

1.8 Mr John Fikile Block, Accused No 9, was found guilty on the following Counts of corruption and money laundering: Count 15 and Count 35; and

1.9 Chisane Investment (Pty) Ltd, Accused No 10, was found guilty on the following Counts of corruption and money laundering, Count 15 and Count 35.

- [2] The circumstances under which the offences were perpetrated are dealt with in the judgment and find it unnecessary to repeat same except in those instances where it has become essential to highlight certain aspects of the evidence for present purposes.
- [3] There had been some considerable delay in disposing of the sentencing proceedings. Following the accused's conviction on 13 October 2015 the criminal trial was postponed to the week of 25 January 2016 for purposes of the sentencing proceedings. At the commencement of those proceedings the National Director of Public Prosecutions (NDPP) brought a confiscation enquiry application to be held in terms of s 18 of the Prevention of Organised Crime Act, 121 of 1998 (POCA). The hearing in that application was only concluded on 28 September 2016 due to the vexed nature of the issues involved and the dichotomous positions adopted by the parties or the unavailability of suitable dates.
- [4] In considering an appropriate sentence the Court should have regard to the crime, the offender, and the interest of the society. It should then impose a sentence which would attempt to balance the nature of the offence and the circumstances under which the offence was committed, the character of the offender, his/her personal circumstances and the impact of the crime on the victim and the community, its welfare and concern.[1]
- [5] It is trite that the purpose of punishment includes individual deterrence of the offender, general deterrence of the other like-minded members of society from committing similar offences, retribution and, where necessary, rehabilitation. However, the gradual and justifiable aggravation of sentences in order to combat, by means of deterrence, retribution and removal of an offender from society in the interests of society, the increasing prevalence of a particular crime must not lead, in the imposition of sentence, to an inevitable negation of a particular accused's own personal circumstances which could possibly lead to mitigation of sentence. Each case must still be weighed in the light of the person and particular circumstances of the accused[2].
- [6] Mr Scholtz is 56 years old and a first offender. His wife died in 2013 after a long illness. He has been involved in regenerative stem cell research since his wife's passing. His son was tragically killed in an accident

during the course of the trial. Mr Scholtz resigned as a director in the Trifecta GOC following his conviction. Adv Van Zyl SC, for Mr Scholtz and the Trifecta GOC, submitted that Mr Scholtz's intention, with the establishment of the Trifecta GOC, had always been to benefit the previously disadvantaged persons. He further submitted that through his various business enterprises he added value in the private sector. He contended that Mr Scholtz is the only person with knowledge of all the facets of Trifecta GOC, played a pivotal role therein and took strategic

decision in the day to day running of the businesses. The various Trifecta enterprises have a relatively significant number of employees. He submitted that over the years Mr Scholtz contributed to the skills development of many people and created a substantial business enterprise. He contended that the State Departments still occupy the buildings in terms of the existing leases and that in all probability, absent the corruption, the government would have still leased the premises from Trifecta.

[7] Mr Van Zyl contended further that the following constitutes substantial and compelling circumstances justifying a departure from the imposition of the prescribed sentences. Mr Scholtz was not the instigator of the corrupt relationship which the Court found existed between the Trifecta GOC and the late Ms Botha and Mr Block. According to counsel the corrupt relationship that existed between the late Ms Botha and the late Mr Breda occurred without the knowledge and participation of Mr Scholtz. He submitted that Mr Scholtz was not involved in the preparation of the bid documents and had no contact with the State officials prior to the adjudication

and/or the awarding of the tenders and that all the lease agreements except in respect of Floors 9, 10, and 11 Du Toitspan, Kimberley,

were concluded before Mr Scholtz met Ms Botha. Counsel contended that the transfer of the 10% shares to Jyba Trust, a Trust nominated by Ms Botha, took place after Mr Breda's death by virtue of an undertaking that was made by the latter to Ms Botha. He contended

further that Mr Scholtz only became aware of the R15 000 cash that was paid to Ms Botha after the payment had been made.

[8] Rehashing what was argued on the merits counsel submitted that the renovation effected to Ms Botha's residence was done by agreement and were done when Botha was in Parliament and no longer the HOD for Social Development. He further contended that Scholtz refused to make the payments for the renovation to Mr Block's guesthouse. Except in respect of the payment of an amount of R338 521.25 to the Duncan and Rothman Attorneys for the benefit of Mr Block, all the payments of gratifications to Mr Block were done on the instructions of Mr Breda, he went on.

[9] Counsel submitted, with regard to the convictions of accused No 4 to 7, some of the Trifecta GOC, that the late Mr Sarel Breda represented those accused and that Mr Scholtz did not participate in the conduct that led to their convictions. He argued that any fines to be imposed on the Trifecta GOC will have a grave impact on Mr Scholtz who holds substantial shareholding therein through his Casee Trust. He submitted that the Financial Intelligence Centre has already flagged Mr Scholtz nationally and internationally as a result of his conviction for money laundering with the result that he has been informed by some of the Banks that his personal facilities will be frozen. The Trifecta GOC convicted of money laundering stands to suffer from the same consequences.

- [10] Mr Block is 48 years old, married with four dependent children, two of whom are minors aged 9 and 11. He maintains his elderly parents and extended family. His wife is self-employed and assist him in the maintenance of the family. He partly lost use of his right arm as a result of a motor vehicle accident and suffers from high blood pressure. He was detained when he was 18 years old for an unspecified short period of time. Following his release during 1985/86 he left South Africa for Namibia as a result political instability and returned in 1987. He obtained an Executive Development Certificate from the University of Cape Town in a year which he did not specify. He has been involved in community development projects and politics for 31 years. He served in various capacities within the African National Congress (ANC). In 1991 he was the chairperson of the Youth League in the Northern Cape; in 1996-1998 its secretary in the Province. In 1998 he was elected the Provincial Deputy Chairperson of the ANC (Northern Cape). Between 2002-2003 he was its Acting Chairperson. He was elected the Provincial Chairperson of the ANC in 2005. Mr Block also held various positions in the government. He was the Member of the Executive Council (MEC) for the Northern Cape Department of Roads, Transport and Public Works from 01 March 2001 to 31 December 2003 and was elected as a member of the Provincial Legislator on 01 October 2008. He became the MEC for the Northern Cape Department of Education from 02 December 2008 to 10 May 2009. With effect from 11 May 2009 he was the MEC for the Northern Cape Department of Finance. He resigned following his conviction and is at present not employed by the government.
- [11] Mr Block has one previous conviction for theft committed in November 1989, almost 27 years ago. For that offence, he was sentenced to four months' imprisonment wholly suspended for four years on certain conditions. Mr Block still maintains his innocence with regard to the offences he has been convicted of in this case. Mr Tshavhungwa, for Mr Block and Chisane Investment (Pty) Ltd, submitted that Mr Block finds himself in a precarious position to make submission on remorse because the transgression he has been found guilty of is not defined in the Prevention and Combating of Corrupt Activities Act, 12 of 2004. Instead of arguing in mitigation of sentence counsel went about criticising what he termed "the honourable court's so-called liberal interpretation of a penal statute". As counsel puts it "the jury is still out on the correctness of the honourable court's liberal interpretation of a penal statute". He submitted that Mr Block has already been punished because he lost his job and is unemployed as a result of his conviction; he had to pay fees for legal representation over a period of three years and that approximately R2 million worth of his assets stood to be confiscated and forfeited to the State.
- [12] There can be no question that the offences on which the accused have been convicted are of a serious nature. In *S v Shaik and Others*

[2006] ZASCA 105; 2007 (1) SACR 247 (SCA) at 319 para 223 the SCA pronounced as follows:

"[223] The seriousness of the offence of corruption cannot be overemphasised. It offends against the rule of law and the principles of good governance. It lowers the moral tone of a nation and negatively affects development and the promotion of human rights. As a country we have travelled a long and tortuous

road to achieve democracy. Corruption threatens our constitutional order. We must make every effort to ensure that corruption with its putrefying effects is halted. Courts must send out an unequivocal message that corruption will not be tolerated and that punishment will be appropriately severe. In our view, the trial Judge was correct not only in viewing the offence of corruption as serious, but also in describing it as follows:

'It is plainly a pervasive and insidious evil, and the interests of a democratic people and their government require at least its rigorous suppression, even if total eradication is something of a dream.'

It is thus not an exaggeration to say that corruption of the kind in question eats away at the very fabric of our society and is the scourge of modern democracies. However, each case depends on its own facts and the personal circumstances and interests of the accused must always be balanced against the seriousness of the offence and societal interests in accordance with well-established sentencing principles."

[13] In dealing with this pandemic Squires J in *S v Shaik and Others* 2007 (1) SACR 142 (D) at 239 expressed his displeasure as follows:

".....(T)his phenomenon can truly be likened to a cancer, eating away remorselessly at the fabric of corporate probity and extending its baleful effect into all aspects of administrative functions, whether State official or private- sector manager. If it is not checked, it becomes systemic and the after-effects of systemic corruption can quite readily extend to the corrosion of any confidence in the integrity of anyone who has a duty to discharge, especially a duty to discharge to the public, leading eventually, and unavoidably, to a disaffected populace. One can, hopefully, discount the prospect of it happening in this country. But it is that sort of increasing

disaffection which leads, and has led in other parts of our continent and elsewhere, to coups d'état or the rise of Populist leaders who, in turn, manipulate politics for even greater private benefit."

[14] In the main judgment I have alluded to the fact that the preamble to Act, 12 of 2004, is premised on the Constitution and stated amongst others that the Constitution enshrines the rights of all people in the Republic and affirms the democratic values of human dignity, equality and freedom; it places a duty on the State to respect, protect, promote and fulfil all the rights as enshrined in the Bill of Rights. It reminds us that corruption and related corrupt activities undermine the said rights, endanger the stability and security of societies, undermine the institutions and values of democracy and ethical values and morality, jeopardise sustainable development, the rule of law and the credibility of governments, and provide a breeding ground for organised crime; and that illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies, ethical values and the rule of law.

- [15] Corruption amounts to no more than an abuse of power for personal gain. This covertly operated criminal offence, no matter how larger than life or minute it can be, is utterly demoralising. While it might be difficult to outroot this social ill completely it cannot be allowed to deepen unabatedly. Civil society looks up to the Criminal Justice System and our Courts to fight this scourge with iron fists and not with velvet gloves. It behoves us to guard jealously against the threat of corruption to our democratic values of human dignity, equality and freedom. We have a legal duty to act steadfastly and without flinching in this regard.
- [16] Mr Van Zyl urged that in considering the sentence I must keep in mind that there are fees of the appointed curator in the amount of approximately R14 million which the Trifecta accused would have to pay. He contended that if the Court orders the confiscation of an amount of R60 million to the State plus the curator's fee and, in addition, the tax in the amount of approximately R5 million, Trifecta stood to lose a total amount of about R79 million. He contended that if the Trifecta corporate accused have to, in addition to these amounts, pay fines they will most probably be commercially insolvent.
- [17] The various counsel proposed the following sentences:
- 17.1 Mr Van Zyl urged that Mr Scholtz be sentenced to a term of imprisonment wholly suspended on condition that the fines imposed on the Trifecta GOC are paid or on such further conditions as the Court deems meet. In the alternative, he urged that on the two counts of corruption correctional supervision be imposed and that for money laundering Mr Scholtz be sentenced to a fine of R5 million and for the six Trifecta GOC, a fine of R200 000 each.
- 17.2 Mr Tshavhungwa pleaded that in a case of Mr Block a fine and a term of imprisonment wholly suspended together with community service would be appropriate.
- 17.3 Mr Serunye, for the State, urged that on the counts of corruption the minimum prescribed sentence of 15 (fifteen) years imprisonment be imposed whereas on the counts of money laundering 10 (ten) years imprisonment would be appropriate.
- [18] It is regarded as proper for a Court considering a sentence to have regard to the legislative policy as expressed in legislation dealing with sentencing. If this were not so, legal and social confusion would ensue, leading to a conflict between the legislator and the Courts.[3]
- [19] While the sentence should be blended with a measure of mercy, maudlin sympathy should not be allowed to override common sense and the social and legislative policy[4]. Corruption is an offence referred to in Part 1 to 4 of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 12 of 2004 (the Corruption Act). In this case the corruption involves amounts in excess of R100 000. It therefore falls within the purview of s 51(2)(a)(i) of the Criminal Law Amendment Act, 105 of 1997, which provides that notwithstanding any other law but subject to subsections (3) and (6), a Regional Court or a High Court shall

sentence a person who has been convicted of an offence referred to in Part II of Schedule 2, in the case of a first offender, to imprisonment for a period not less than 15 years.[5]

[20] Section 26 of the corruption Act specifies certain penalties for offences in contravention of the Act. It provides that any person who is convicted of an offence referred to in Part 1, 2, 3 or 4, or section 18 of Chapter 2, is liable in the case of a sentence to be imposed by a High Court, to a fine or up to life imprisonment.[6] With regard to the offences committed in terms of the Prevention of Organised Crime Act, 121 of 1998 (POCA), in this case money

laundering, s 8(1) of POCA provides that (1) Any person convicted of an offence contemplated in section: 4, 5 or 6 shall be liable to a fine not exceeding R100 million, or to imprisonment for a period not exceeding 30 years.

[21] It is evident from the penal provision of the legislation discussed that the legislature has ordained severe penalties for corruption and money laundering. At the end of his argument Mr Van Zyl made an application that a Correctional Services Report be obtained in line with his submission that correctional supervision be considered as a sentencing option. That application was supported by Mr Tshavhungwa, for Mr Block. I dismissed the application and informed counsel that my reasons would be incorporated in this judgment. The sentence of correctional supervision proposed by the defence is fallacious and would make a mockery of our criminal justice system. There can be no question that the imposition of correctional supervision in inappropriate circumstances can be incompetent and detrimental to the interests of justice[7]. Recently in *DPP Western Cape v Kock* 2016 (1) SACR 539 (SCA) at 546-547 para 22 the Court warned against the kid-glove treatment of white collar crime offenders as follows:

“[22] Even more worrisome is the trend by courts to impose lenient sentences in cases of so-called 'white-collar' crime, despite

repeated warnings by this court that in suitable cases terms of imprisonment ought to be imposed, even in cases of first offenders.

Thus in *S v Brown* 2015

(1) SACR 211 (SCA) involving such white-collar crime, this court cautioned that, even though the court below was correct in its conclusion that the minimum sentence did not find application in that case, it ought to have considered, given the objective gravity of the offences, whether a custodial sentence was nonetheless called for. In *Brown* this court warned that courts should guard against creating the

impression that there are two streams of justice, one for the rich and one for the poor. The court in *Olivier* [*Director of Public Prosecutions v Olivier* 2006 (1) SACR 380 (SCA)] expressed similar concerns. These are issues that courts should give serious consideration to, lest the administration of justice fall into disrepute.”

[22] More importantly, s 276(3)(b) of the Criminal Procedure Act, 51 of 1977, makes it plain that correctional supervision may not be imposed in any case where the Court is obliged to impose a sentence contemplated

in section 51 (1) or (2), read with section 52, of the Criminal Law Amendment Act, 1997. It is for these reasons that the application for the provision of the correctional services report was refused.

[23] As alluded to in the judgment Mr Scholtz downplayed his interactions with the late Mr Breda with regard to the procurement of the leases. For instance, on 15 March 2007 he signed an addendum to the Summerdown Place Office Campus, the Kuruman lease, which sought to correct the amounts payable in respect of the packing space. Mr Scholtz was the directing mind of the Trifecta GOC. He also provided the required capital injection to establish the business empire and benefited from the corrupt activities.

[24] Trifecta monopolised the procurement of office accommodation by design. The process was grossly unfair towards the public, extremely unethical

and accompanied by malfeasance. What is even more aggravating in this case is that the corrupt relationship that existed involved a high- ranking government official, the late Ms Botha, the HOD of a government department and the most influential politician, Mr Block, the Provincial Chairperson of the ANC at the time. Ms Botha had the onerous duty towards the society to act fairly, transparently and accountably in dealing with the State resources. She deplorably failed on that score and went all out to benefit Trifecta and herself as already mentioned. Mr Block exerted his political influence upon Mr Crouch to corruptly assist his friend Mr Breda to secure leases in the Department of Sports, Arts and Culture and the Department of Agriculture and Rural Development for the benefit of Trifecta and others. He in return received gratifications from Trifecta in large stated amounts.

[25] Nothing presented by Scholtz and Mr Block in their mitigation and personal circumstances constitute any substantial and compelling circumstances justifying a departure from the imposition of the prescribed minimum sentences. It was held in *S v Malgas* 2001

(1) SACR 469 (SCA) at 481-482 para 25 that the Courts are required to approach the imposition of sentence conscious that the Legislature has ordained life imprisonment (or the particular prescribed period of imprisonment) as the sentence that should ordinarily and in the

absence of weighty justification be imposed for the listed crimes in the specified circumstances. Unless there are, and can be seen to be, truly convincing reasons for a different response, the crimes in question are therefore required to elicit a severe, standardised and consistent response from the courts. The specified sentences are not to be departed from lightly and for flimsy reasons. Speculative hypotheses favourable to the offender, undue sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy underlying the legislation, and marginal differences in personal circumstances or degrees of participation between co-offenders are to be excluded.

[26] In *S v Shaik and others*

[2006] ZASCA 105; 2007 (1) SACR 247 (SCA) a businessman, who had been convicted in the High Court on two counts of corruption and one of fraud was sentenced to an effective 15 year term of imprisonment. The remaining ten corporate accused associated with him, were convicted on various counts of corruption and fraud and sentenced to the payment of fines in varying amounts. The SCA confirmed the sentence of 15 years'

imprisonment[8] imposed by the trial Court. The application for leave to appeal against the sentences was dismissed by the ConCourt .[9] In *S v Selebi* (Judgment on sentence) reported on line under case No: (25/2009) [2010] ZAGPJHC 58 (3 August 2010) the Accused was convicted in the High Court of corruption in contravention of s 4(1)(a) of the Prevention and Combating of Corrupt Activities Act, 12 of 2004, and sentenced to 15 years imprisonment. I can conceive of no reason not to take cue from the authorities cited.

[27] On the above conspectus, in order to ameliorate the cumulative effect of the sentences to be imposed and because they originate from essentially the same transactions I am of the view that they be served concurrently. In the end, to borrow the words of Holmes JA in *S v V* 1972 (3) SA 611 (A) at 614D – E '(t)he element of mercy, a hallmark of civilised and enlightened administration, should not be overlooked' more so when one is dealing with multiple offences.

[28] With regard to the corporate accused the only penalty that can be imposed on them is a fine. As alluded to in my main judgment, Trifecta Investment Holdings (Pty) Ltd is an umbrella company which holds shares in the Trifecta GOC, the subsidiary companies. Mr Trevor Sean White, a director in charge of the Forensic Services Department of PricewaterhouseCoopers, attested to a statement in terms of s 18(6)(iii) of the Prevention of Organised Crime Act, 121 of 1998 (POCA), in the confiscation enquiry held terms of that Act. He obtained a list of all the payments made to, amongst others, the Trifecta GOC by, inter alia, the Northern Cape Department of Social Development, South African Social Security Agency (SASSA), the Northern Cape Department of Agriculture and Land Reform and the Northern Cape Department of Sports Arts and Culture, as recorded in the Government's Basic Accounting System (BAS). Relevant to the leases in issue is that he determined the total amount paid to Trifecta GOC in respect of the leases.

[28] In respect of 14 Van Riebeek Street, Springbok, a total of 115 payments in the amount of R16,579,117.68 were made to Trifecta Trading 434 Property 5 (Pty) Ltd, Accused No 5, from 06 June 2007 to 30 April

2016. Concerning Summerdown Place, Kuruman, a total of 111 payments in the amount of R16,094,494.34 were made to Trifecta Trading 434 Property 7(Pty) Ltd, Accused No 6, from 09 March 2007 to 30 April 2016. With regard to Keur and Geur Building, the Douglas Lease, for the period 24 December 2008 to 02 March 2015 a total of 78 payments in the amount of R2,226,160.92. were made to Trifecta Trading 434 Property 11, Accused No 7. Concerning Floors 5,6 and part of floor 7, Du Toitspan Building, Kimberley, a total of 79 payments in the

amount of R10,963,981.38 were made to Trifecta Trading 434 Property 4, Accused No 4, from 14 December 2006 to 14 August 2013. In respect of Floors 9, 10 and 11 of the same building a total of 61 payment in the amount of R14,511,262.70 were made to the same accused from 16 September 2008 to 14 August 2013.

- [29] With regard to the Kimberlite Hotel, Kimberley, for the period 31 March 2006 to 26 September 2013, Accused No 3, Trifecta Holdings (Pty) Ltd, received 92 payments in the amount of R19,506,634.82. In respect of the Northern Cape Training Centre, Kimberley lease, the Department of Agriculture made 95 payments in the amount of R34,349,031.15 to Trifecta Holdings (Pty) Ltd, Accused No 3, from 15 June 2006 to 20 February 2014. With regard to the Old Orange Hotel, Upington lease, which was ceded by the Department of Social Development to SASSA on 29 March 2006, for the period 17 July 2006 to 30 April 2016 a total of 120 payments in the amount of R37 687 849.29 were made to Accused No 5, Trifecta Trading 434 Property 5 (Pty) Ltd.
- [30] The accused did not seriously contest receipt of the aforesaid rental amounts. It suffices to mention that they submitted that they were entitled to receive the rental for the premises leased to the State. Mr Shawn Williams, the curator bonis appointed in terms of s 28 (1) (a) of POCA filed an affidavit in the confiscation enquiry and states at para 25 thereof:

“I submit that all the property disclosed and referred to in this affidavit barring the cash under my control [which is approximately

R80 million rand] is in excess of the value of the realisable property required and well in excess of R500 million.”

- [31] The net proceeds of the leases from the commencement date of the leases to valuation or selling date including the CPI as agreed to between the NDPP, Mr

Scholtz and the Trifecta GOC is in the aggregate amount of R6,043,960.15 calculated as follows:

18.1 Riebeeck Street, Springbok – R240 204.02

18.2 Summerdown Place, Kuruman – R681 469.09

18.3 Keur and Geur Building Douglas – R99 998.49

18.4 Floors 9, 10 and 11 Du Toitspan – R1 029 612.49

18.5 Kimberlite Hotel, Kimberley – R1 490 439.94

18.6 Northern Cape Training Centre – R2 502 245.23

- [32] Having sketched out the above, I am of the view that the Trifecta GOC are in a position to pay the fines which I would shortly impose on them.

- [33] Chisane Investment (Pty) (Ltd), Accused No 10, received one payment in the amount of R228 000.00 inclusive of VAT from Shosholoza Trust, a trust belonging to Mr Breda, which held 45% shares in Trifecta Investment Holdings, Accused No 2. The amount was confiscated to

the State. Mr Williams ascertained from the other curator's report that Chisane Investment (Pty) Ltd appeared to be dormant and has no assets. It seems to me that any order against Chisane Investment to pay a fine may be a brutum fulmen. Therefore, it will be pointless to levy a fine against it.

[34] In the circumstances the following sentences are imposed:

Order:

1. Mr Alfeus Christo Scholtz, Accused No 1, is sentenced as follows:

1.1 In respect of Count 8, corruption, the accused is sentenced to 15 (fifteen years' imprisonment;

1.2 In respect of Count 16, corruption, the accused is sentenced to 15 (fifteen) year' imprisonment;

1.3 In respect of Count 34, money laundering, the accused is sentenced to 12 (twelve) years imprisonment;

1.4 In respect of Count 35, money laundering, the accused is sentenced to 12 (twelve) years imprisonment;

1.5 It is ordered that the sentences in Counts 8, 16, 34 and 35 are to run concurrently. The accused will serve an effective 15 (fifteen)years imprisonment.

2. Trifecta Investment Holdings (Pty) Ltd, Accused No 2, is sentenced as follows:

2.1 In respect of Count 8, corruption, the accused is sentenced to a fine of R150 000.00 (one hundred and fifty thousand);

2.2 In respect of Count 34, money laundering, the accused is sentenced to a fine of R75 000.00 (seventy five thousand).

3. Trifecta Holdings (Pty) Ltd, Accused No 3, is sentenced as follows:

3.1 In respect of Count 8, corruption, the accused is sentenced to a fine of R150 000.00 (one hundred and fifty thousand);

3.2 In respect of Count 16, corruption, the accused is sentenced to a fine of R150 000.00 (one hundred and fifty thousand);

3.3 In respect of Count 34, money laundering, the accused is sentenced to a fine of R 75 000.00 (seventy five thousand);

3.4 In respect of Count 35, money laundering, the accused is sentenced to a fine of R75 000.00 (seventy five thousand);

4. Trifecta Trading 434 Property 4 (Pty) Ltd, Accused No 4, is sentenced as follows:

4.1 In respect of Count 8; corruption, the accused is sentenced to a fine of R 150 000.00 (hundred and fifty);

5. Trifecta Trading 434 property 5 (Pty), Accused No 5, is sentenced as follows:

5.1 In respect of Count 8; corruption, the accused is sentenced to a fine of R150 000.00 (hundred and fifty);

6. Trifecta Trading 434 Property 7 (Pty) Ltd, Accused No 6, is sentenced as follows:

6.1 In respect of Count 8; corruption, the accused is sentenced to a fine of R150 000.00 (hundred and fifty);

7. Trifecta Trading 434 Property 11 (Pty) Ltd, Accused No 7, is sentenced as follows:

7.1 In respect of Count 8; corruption, the accused is sentenced to a fine of R150 000.00 (hundred and fifty);

8. Mr John Fikile Block, Accused No 9, is sentenced as follows:

8.1 In respect of Count 15, corruption, the accused is sentenced to 15 (fifteen) years imprisonment;

8.2 In respect of Count 35, money laundering, the accused is sentenced to 12 (twelve) years imprisonment.

8.3 It is ordered that the sentences in Counts 15 and 35 are to run concurrently. The accused will serve an effective 15 years' imprisonment.

MV PHATSHOANEJUDGENORTHERN CAPE HIGH COURT

Appearance for accused No 1-7 : Adv. J.G Cilliers SC assisted by Adv. MMW Van Zyl SC
Instructed by W.A Du Plessis Attorneys
Appearance for accused No 9-10 : Adv. S Joubert SC assisted by Adv Tshavhungwa
Instructed by Mjila & Partners
Appearance for the State: Adv. P Serunye assisted by Adv. B Mdlalose
Instructed by The Director of Public Prosecutions

[1] See S v Zinn 1969 (2) SA 537 (A) at 540G and S v Banda and Others 1991 (2) SA 352 (B) at 355A – C.

[2] See S v Matoma 1981 (3) SA 838 (A) at 842H - 843A

[3] S v Jiminez 2003 (1) SACR 507 (SCA)521 para 31

[4] S v Jiminez 2003 (1) SACR 507 (SCA)521i-522b para 31-32

[5] Part II of Schedule 2 list, inter alia, offence in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004-

- (a) involving amounts of more than R500 000,00;
 - (b) involving amounts of more than R100 000,00, if it is proved that the offence was committed by a person, group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy; or
- [5] Part II of Schedule 2 list, inter alia, offence in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004-
- (a) involving amounts of more than R500 000,00;
 - (b) involving amounts of more than R100 000,00, if it is proved that the offence was committed by a person, group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy; or
- [6] See s 26(1)(a)(i)
- [7] S v Farmer [2002] 1 All SA 427 (SCA) par [11]
- [8] S v Shaik and Others [2006] ZASCA 105; 2007 (1) SACR 247 (SCA) at 320-321 paras 229-230.
- [9] S v Shaik and Others [2007] ZACC 19; 2008 (1) SACR 1 (CC) at 30-34 paras 69-82
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