



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 24 JANUARY 2022

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Mphanama v The State (1107/2020) [2022] ZASCA 11 (24 January 2022)

Today the Supreme Court of Appeal (SCA) handed down judgment upholding in part, and dismissing in part, the appeal against a decision of the Full Court of the Limpopo Division of the High Court, Polokwane (the full court).

The issues before the SCA were whether the State had produced sufficient evidence to prove beyond a reasonable doubt that the appellant's conduct amounted to fraud and defeating or obstructing the course of justice.

The appellant was charged with three other accused. The appellant was accused 1. They were charged with 21 counts but the appeal related only to the convictions of fraud on counts 15-18 and defeating the ends of justice on count 21. They were discharged on all the remaining counts.

In respect of count 15-18, the State alleged that the appellant submitted claims for official trips utilising the particulars of a Toyota RAV4 (the RAV4) vehicle, whilst he knew that the vehicle that he utilised for the trips was a Cadillac 200cc petrol sedan (the Cadillac), which was subject to a lower tariff. This the State alleged amounted to fraud. The prejudice suffered by the Department of Justice and Constitutional Development and/or the Department of Justice and Correctional Services' (the Department) was that, during the period December 2008 to March 2009, it overpaid the appellant an amount of around R3 768.25.

The State's evidence was that the appellant had sold the RAV4, and that he owned, and was observed using, the Cadillac exclusively since at least November 2008. The key question was whether that amounted to *prima facie* proof of fraud. Several of the State witnesses gave evidence on this issue.

The appellant's counsel put a version to the state witnesses, that the appellant, despite disposing of the RAV4 borrowed the RAV4 from time to time, after November 2008, to undertake all his official trips. The State witnesses disputed this version. The appellant chose not to give evidence to rebut the *prima facie* case. The appellant submitted that the State had failed to produce sufficient evidence to show that he had acted fraudulently, which conduct was actually and/or potentially detrimental to the administration of justice

The SCA found that the State had made out a *prima facie* case of fraud against the appellant. The SCA held that as a result of the appellant's failure to testify, his version did not amount to evidence. Hence, the appellant was at risk of conviction, absent his taking the stand. The SCA therefore dismissed the appeal against the convictions on counts 15-18.

In respect of count 21 – defeating or obstructing the course of justice – the appellant was indicted on the following facts. During or about May 2009, the appellant, in his capacity as a magistrate, unlawfully and with the intent to defeat or obstruct the course of justice, reduced a traffic fine of R1 000 to an amount of R700. The traffic offender had approached the office of the prosecutor with an application for a reduction of the amount of the fine, and the application was rejected by the prosecutor.

Evidence was given by the State witnesses in regard to a meeting held in respect of which the question was whether a magistrate was authorised to reduce a fine in regard to a traffic offence before an appearance in court. At the meeting, it was resolved that only the prosecutor could do this.

The SCA was of the view that the evidence regarding the meeting and the decisions taken thereafter created some confusion. The submissions of the appellant that he was entitled to do what he did; casts doubt upon the element of intent to defeat the ends of justice. Thus, on this count, the SCA upheld the appeal and set aside the conviction.

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