



## 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:** 17 November 2023

**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***

*Smit v The State* (1256/2022) [2023] ZASCA 154 (17 November 2023)

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Today the Supreme Court of Appeal (SCA) handed down judgment upholding the appeal against the order of the North West Division of the High Court, Mahikeng (the high court).

The appellant was convicted of fraud by the regional court and sentenced to 15 years' imprisonment. The high court upheld the conviction. The issues before the SCA were whether the appellant had the intention to commit fraud in the form of *dolus eventualis* and whether the appellant, an unrepresented accused, was given insufficient assistance by the Regional Court, Lichtenburg (the regional court).

The appellant purchased cattle from the complainant. As per their custom, the appellant was to pay the complainant within seven days. The appellant immediately on-sold the cattle to another company for a profit, but failed to pay the complainant within the agreed seven days. Instead, the appellant loaned a substantial amount to his friend and used the rest of the money to buy more cattle, not allocating any monies to repay the complainant. When the complainant contacted the appellant to request payment, the appellant assured the complainant that he would pay as soon as he received payment from the company that he had sold the cattle to. This was not the truth, the company in question had already paid. The appellant's friend committed suicide, as a result, the appellant was unable to pay the complainant. The regional court found the appellant guilty on the basis that he had treated the money as if it were his own, while the high court found that the appellant's actions constituted an intention to commit fraud in the form of *dolus eventualis*.

Before the SCA, the State conceded that there was insufficient evidence to prove that the appellant had the intention to defraud the complainant at the time that the agreement of sale was concluded. The SCA found that although the appellant had been reckless in loaning the money received from the company to his friend, this did not translate into intent in the form of *dolus eventualis*. The SCA held that the State had failed to prove the intent to defraud. The SCA dismissed the appellant's claim that he was not given sufficient assistance by the regional court, as he had multiple opportunities to obtain legal representation but chose to represent himself. The SCA upheld the appeal and made an order setting aside the conviction and sentence.

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