THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM	The Registrar, Supreme Court of Appeal
DATE	01 December 2010
STATUS	Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Sewela v The State (731/2010) [2010] ZASCA 159 (01 December 2010)

The Supreme Court of Appeal today dismissed an appeal brought against the dismissal by the court a quo of an appeal brought against a decision by a regional magistrate to refuse to release the appellant on bail pending his trial.

The appellant is charged together with four others on five counts of fraud and money laundering in contravention of s 5 of the Prevention of Organised Crime Act 121 of 1998 ('POCA'). The State alleges that the appellant is part of a syndicate which fraudulently intercepts money from South African Revenue Services (SARS) intended as legitimate payment to legitimate taxpayers and divert it to fictitious bank accounts controlled by the syndicate.

The State alleges further that the five charges involve an amount exceeding R77m. There are serious allegations by the State that approximately R31m of this amount was paid into a fictitious account of SBC International Management Service (Pty) Ltd over which the appellant has control. The appellant admitted that an amount of R8m was paid into the account of his close corporation, Tiffany Trading 847 CC. The appellant failed to adduce satisfactorily evidence that this payment was legitimate.

Furthermore, the State alleges that the appellant has a case of fraud pending at the Phokeng Magistrates' Court involving approximately R1,3m. What this means is that the appellant got involved in these five counts of fraud whilst he was released on his own recognisances in

respect of the Phokeng fraud. According to the State a similar modus operandi was used in both cases.

The SCA found that as this bail application was governed by s 60 (11) (b) of the Criminal Procedure Act, 51 of 1977, this being a Schedule 5 offence, that the appellant bore the onus to satisfy the court that the interests of justice permitted his release on bail. Both regional magistrate and the court a quo had found that the appellant had failed to prove that the interests of justice permitted his release on bail.

Based on the evidence, the SCA found that the State had a strong prima facie case against the appellant, and that the appellant failed to discharge the onus resting on him.

The SCA found that the strength of the State's case coupled with the appellant's past conduct were such that the release of the appellant on bail would undermine and erode the public's confidence in the criminal justice system including the bail system itself.

Finally the SCA found that as the appellant had failed to prove that the court a quo was wrong in denying him bail, that it could not interfere with that judgment. The SCA dismissed the appeal.