



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Case no: 117/12

Non Reportable

In the matter between:

NOMFUSI NOMPUMZA SEYISI

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation: *Seyisi v The State* (117/12) [2012] ZASCA 144
(28 September 2012)

Coram: Nugent, Ponnann, Cachalia, Leach and Tshiqi JJA

Heard: 18 September 2012

Delivered: 28 September 2012

Summary: Expert evidence – once accepted as credible, constitutes prima facie proof – onus of rebuttal on the defence.

ORDER

On appeal from: Eastern Cape High Court, Bisho (Dhlodhlo ADJP and Kemp AJ sitting as court of appeal):

The appeal is dismissed.

JUDGMENT

TSHIQI JA (NUGENT, PONNAN, CACHALIA AND LEACH JJA CONCURRING)

[1] The appellant was charged in the Mdantsane Regional Court, Eastern Cape, with 1025 counts of fraud, alternatively with theft, it being alleged that she caused or facilitated unauthorised payments of social welfare grants (to fictitious persons) by affixing her own thumb and/or toe print to payment vouchers. It was alleged that she committed the fraud whilst she was employed as a paymaster by the Department of Social Development, Bisho, Eastern Cape (“the department”).

[2] She was convicted of fraud on all the 1025 counts and was sentenced to five years’ imprisonment. All the counts were taken together for the purposes of sentence. The provisions of s 276(1)(i) of the Criminal Procedure Act 51 of 1977 were made

applicable to the sentence.¹ A confiscation order in terms of s 18 of the Prevention of Organised Crime Act 121 of 1998 (POCA)² was, also made an order of the court. She was ordered to pay an amount of R1 334 820 with costs to the curator *bonis* appointed in terms of POCA. Her appeal to the Bisho High Court against the convictions was dismissed. She now appeals to this court against the convictions only, leave having been granted by the high court.

[3] The appellant was implicated in the fraud through an investigation conducted at the instance of the department by a fingerprint expert, Mr Stassen, who was the main State witness at the trial. The investigation revealed that the fraud had been committed during the period between 1994 to 1996 in Bisho, Eastern Cape. It further revealed that some of the persons reflected as beneficiaries were either dead at the time payment was made or were recorded twice in the system, resulting in a duplication of payment to the same beneficiaries.

¹ Section 276(1)(i) of the Criminal Procedure Act 51 of 1977 provides for imprisonment from which a person may be placed under correctional supervision in the discretion of the Commissioner of Correctional Services or a parole board.

² Section 18(1) of POCA provides: 'Whenever a defendant is convicted of an offence the court convicting the defendant may on the application of the public prosecutor, enquire into any benefit which the defendant may have derived from

(a) that offence;

(b) any other offence of which the defendant has been convicted at the same trial; and

(c) any criminal activity which the court finds to be sufficiently related to those offences,

and, if the court finds that the defendant has so benefited, the court may, in addition to any punishment which it may impose in respect of the offence, make an order against the defendant for the payment to the State of any amount it considers appropriate and the court may make any further orders as it may deem fit to ensure the effectiveness and fairness of that order.'

[4] Stassen testified that before he joined the department he was a fingerprint investigator in the employ of the South African Police Services since 1978. At the time of the trial he was employed by the department and had been so employed since 6 September 2001. He still did fingerprint analysis on a daily basis. He found irregularities such as several runs of prints of a then unknown person. He became suspicious because that person had signed for more than five people and also because there were both finger and toe prints in those instances.

[5] On 18 May 1999, Stassen received a faxed copy of a set of fingerprints bearing the name of the appellant, Nomfusi Nompumza Seyisi. He compared the right thumb, right forefinger, right middle finger, left thumb and left forefinger of that set of prints with the prints that appeared on 798 payment vouchers emanating from the Peddie district and found seven or more points of similarity on all the prints. He testified that seven points of similarity were sufficient to establish that the prints had emanated from the same person. He testified that the faxed copy had subsequently disappeared but handed in the vouchers as exhibit 'A'. He further testified that on 12 March 2003 he received a further set of finger and toe prints from the joint anti-corruption task team with the name of the appellant on them. He compared them with the earlier prints in exhibit 'A' and found, on the same basis, that, the right thumb, right forefinger, right middle finger and left thumb and left forefinger prints corresponded with those of the appellant. He concluded that they had been made by her. He stated that he found seven or more points of similarity on each print. These he handed in as exhibit 'B'.

[6] He conducted further investigations and found further fingerprints on payment vouchers from the Peddie district. A total of 1025 fingerprints on the payment vouchers were similar and corresponded to the right thumb, right forefinger, right middle finger, left thumb, left forefinger as well as the right big toe and left big toe prints appearing in the set he had received. He also handed in a comparison chart for seven of the vouchers. A total of 1025 payment vouchers were also handed in as exhibit 'J'. On 8 October 2003 he took a set of fingerprints and toe prints from the appellant and compared the appellant's fingerprints with the fingerprints appearing in exhibit 'B'. He concluded that they emanated from the same person.

[7] Stassen was asked in cross-examination to explain the seven points of similarity. He said that he could not do so there and then but would be able to do so if he was given an opportunity to stand down. The cross-examiner did not press the matter further.

[8] The second state witness was Mr Rasussen. He testified that he requested Stassen to conduct the investigation. He was informed by Stassen that he had found many irregularities such as runs of finger and toe prints on the vouchers already paid out. He explained that the irregularities resulted in various kinds of loss for the department.

[9] The evidence of Rasussen was followed by that of Mr Townsend. He testified that he was employed by the department and was responsible for the prevention, detection and investigation of fraudulent activities within the department. He elaborated on all the several irregularities he found during his investigation. During cross-examination he agreed that he could not link the irregularities to the appellant.

[10] The appellant testified in her own defence. She admitted that she was employed by the department as a paymaster at the time the irregularities were committed but denied that she was involved in any wrongdoing. She specifically denied that her finger and toe prints were on the vouchers. During cross-examination she admitted that as the paymaster she was indeed responsible for keeping both the money and the vouchers. She further admitted that she would keep all the money and the vouchers that remained after payments had been made until she handed over everything at their office in Bisho. She also admitted that as the paymaster she was the head of the pay team and that it was her responsibility to ensure that everything was properly administered.

[11] The main issue on appeal is whether the fingerprints on the various vouchers indeed emanated from the appellant. The only evidence contradicting that of Staasen was a denial by the appellant that the prints on the vouchers were hers.

[12] In *Gentiruco AG v Firestone SA (Pty) Ltd* 1972 (1) SA 589 (A) the court, referring to *Wigmore on Principles of Evidence* (3ed) Vol VII para 1923 stated that ‘the true and practical test of the admissibility of the opinion of a skilled witness is whether or not the Court can receive “appreciable help” from that witness on the particular issue’³ Expert witnesses are in principle required to support their opinions with valid reasons. But no hard-and-fast rules can be laid down. Much will depend on the nature of the issue involved and the presence or absence of an attack on the opinion of the expert.⁴ Where the expert has personally conducted experiments it is easier for the court to follow the evidence, accept it and rely on it in deciding the issue.⁵ In this matter Stassen compared the finger and toe prints of the appellant to the prints uplifted from the payment vouchers and went further to explain his findings to the court. Other than a bare denial the appellant led no rebuttal evidence. Effectively the trial court was faced with the *prima facie* evidence of the expert. There was no challenge to the manner in which he had conducted his investigation, nor to his evidence that in each case there were seven points of similarity, nor was it contested that seven points were sufficient to establish that the prints had emanated from the same person. The court found the evidence acceptable and in its judgment stated:

‘If we have an expert, he is conceded to be an expert and his evidence is credible before the Court then the Court must at the very least accept his evidence as being prima facie proved and

³ *Wigmore Evidence* Vol VII, 3 ed (2004); *Gentiruco AG v Firestone SA (Pty) Ltd* 1972 (1) SA 589 (A) at 616; Schwikkard and Van der Merwe *Principles of Evidence* 2ed (2002) 79 at 89.

⁴ *S v Ramgobin* 1986 (4) SA 117 (N) 146 D-G; *S v Mthimkulu* 1975 (4) SA 759 (A).

⁵ *S v Van As* 1991 (2) SACR 74 (W).

this is where then an onus rests on the defence to dispute facts that are prima facie proved before the Court. So if the expert tells the Court here are seven points and these are similar seven points on this next photograph and one can see that they are pointing to exactly the same area as the specific points on them then there at least rests a duty on the defence to have asked the witness what are these points, if he wanted to know what they were so that he could place them in dispute at some stage. It is quite clear that the witness told the Court that he is able to tell the Court what they are and the witness told us that he is able to point out the seven points of similarity on all the 1 025 vouchers that have been presented to the Court.

This has not been done by the defence so therefore the evidence must stand then as undisputed evidence. Our law is quite clear that if evidence is prima facie evidence and it is not discredited or placed in dispute by the defence in any manner then it must be accepted as proven evidence. I have had occasion to look through all of the 1 025 vouchers and if one looks through these and compares them to what has been presented on these particular charts then one can see the similarities in general regarding these particular points and it is in particular the right forefinger which has quite a unique pattern on it which is seen throughout the Exhibits'

[13] In argument before us it was submitted that the magistrate ought not to have accepted the evidence of Stassen without first having an explanation of the points of similarity and satisfying himself personally that the prints corresponded. I do not think that is correct. As pointed out above a court is entitled to be guided by the evidence of an expert. In the absence of a challenge to expert evidence that prima facie establishes the relevant facts a court is entitled to rely upon it to convict. In this case there was no challenge to his expertise, or to the grounds upon which he expressed the opinion that the prints corresponded. Indeed, at the conclusion of Stassen's evidence, counsel

appearing for the appellant specifically recorded that he wished to reserve further cross-examination until he had consulted with his own fingerprint expert to ascertain whether he disputed Stassen's conclusion. Stassen was never recalled for further cross-examination, and the reason for this failure is obvious. There is therefore no merit in the appeal.

[14] The appeal is accordingly dismissed.

Z L L TSHIQI
JUDGE OF APPEAL

APPEARANCES:

For Appellant:

PW Nel

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King William's Town

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For Respondent:

C de Kock

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