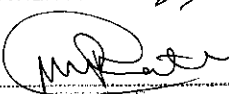


04/10/2012

NORTH GAUTENG HIGH COURT, PRETORIA  
REPUBLIC OF SOUTH AFRICA

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: <del>YES</del> NO.	
(2) OF INTEREST TO OTHER JUDGES: <del>YES</del> NO.	
(3) REVISED.	
04/10/2012	
DATE	SIGNATURE

Case No: A996/2011  
Date heard: 04 October 2012  
Date of judgment: 04 October 2012

In the matter between:

ELIAS PHILEMON SITHOLE

Appellant

and

THE STATE

Respondent

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JUDGMENT

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PHATUDI J:

[1] The appellant is convicted on one count of fraud and one of forgery in Amersfoort Regional Court.

[2] The appellant was sentenced to 4(four) years imprisonment on fraud count and 3 (three) years imprisonment on forgery.

[3] Leave to appeal is granted only against sentence on forgery.

[4] It is trite that sentencing remains pre-eminently within the discretion of the sentencing court. It is further trite that the appeal court can only interfere if misdirection on the part of the trial can be found.

[5] The state conceded that the trial court ought to have order the sentence on forgery to run concurrently with that of fraud. The state refers me to section 280 (2) of Criminal Procedure Act 51 of 1977 that permits the sentencing court to order various sentence s which have been imposed to run concurrently.

[6] On perusal of the record and having heard submissions made, I am of the view that the trial court did misdirected itself by not letting the sentence on count 2 to run concurrently with that on count 1.

I, in the result, would make the following order:

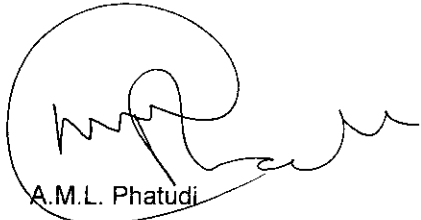
1. The appeal is upheld.

2. The sentence imposed by trial court is set aside and replaced with the following

Count1 – Accused is sentenced to 4 (four) years imprisonment

Count 2 – Accused is sentenced to 3 years imprisonment.


The sentence in count 2 is ordered to run concurrently with the sentence on count 1. Effective sentence is 4 (four) years imprisonment



A.M.L. Phatudi

Judge of the High Court

I agree.



D.S. Molefe

Acting Judge of the High Court

On Behalf of the Appellant:

M. Jungbluth  
Botha & Van Dyk Inc  
30 De Clerq Street  
Ermelo

Attorney: Mr. M Jungbluth

On Behalf of the Respondent:

Director of Public Prosecutions  
Church Square

Adv. N. R. Motaung