IN THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MIDDELBURG

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

19 September 2024 MANTHATA AJ...

DATE SIGNATURE

APPEAL NUMBER A32/2022

REGIONAL COURT CASE NUMBER ESH157/2016

In the matter between:

LORRAINE RANDELL **APPELLANT**

and

THE STATE **RESPONDENT**

JUDGEMENT

CORAM: Mashile J and Manthata AJ

Manthata AJ

Introduction

[1] The Appellant was convicted in the Regional Court Middleburg for corruption in contravention of section 4(1)*(b)*(ii)*(aa)* of the Prevention and Combating of Corrupt Activities Act 12 of 2004 (the Act) and sentenced to five (5) years imprisonment.

[2] Aggrieved by the conviction, the Appellant applied for leave to appeal the conviction in terms of section 309(1)*(a)* of the Criminal Procedure Act 51 of 1977 (the CPA) and the application was granted. Accordingly, this appeal concerns conviction only.

Grounds of Appeal

[3] Subsequent to the granting of leave to appeal, the appeal is lodged on the following grounds:

3.1 That the court *a quo* erred in not approaching the evidence of the State's witness, Salome Brits (Ms Brits), with caution because she was a single witness; and/or

3.2 That the court *a quo* erred in addition by not considering the evidence of Ms Brits with caution because she was called as an accomplice and gave evidence in terms of section 204 of the CPA;

3.3 That the court *a quo* did not consider, alternatively properly consider or apply the two cautionary rules, in assessing the credibility of Ms Brits;

3.4 That the court *a quo* erred in finding that the State has proven a nexus between payments made by the Appellant to Ms Brits, as gratification for Ms Brits to wrongfully issue and/or sign high amounts of section 65J orders in terms of the Magistrates Court Act 32 of 1944 (Act 32 of 1944), for the benefit of Bayport Financial Services (Pty) Ltd; and

3.5 That the court *a quo* erred in not finding the evidence of the Appellant as reasonably true.

[4] The main grounds by the State for the opposition of the appeal were; firstly, that the court *a quo* correctly convicted the Appellant on a charge of contravention of section 4(1)*(b)*(ii)*(aa)* of the Act, accepting a benefit. Secondly, that it is not the requirement that the guilt of an accused must be proven beyond all doubt. Thirdly, that the court *a quo* treated and dealt with the evidence of Ms Brits as a single witness and as an accomplice.

Brief Factual Background

[5] The Appellant is a practising attorney admitted as such on 17 September 2007. She started her own practice in January 2009 and specialises in administrations, divorce matters and some labour law work. She also deals with conveyancing matters and receives corresponding instructions from other attorneys.

[6] The State's witness, Ms Brits, was a clerk of the civil court at Ermelo Magistrate Court at the time when the incident occurred. Her duties, according to her, were amongst others, issuing of Emolument Orders in terms of Section 65J of Act 32 of 1944.

[7] The Appellant and Ms Brits were friends during the period in which the incident occurred. Ms Brits recommended the Appellant to Jaco Knoetze of Bayport Financial Services (Pty) Ltd, (Bayport), to act as their correspondence attorney in matters to be dealt with in terms of section 58 of Act 32 of 1944 at Ermelo Magistrate Court. Subsequent thereto, the Appellant acted as correspondence of Bayport and brought thousands of files to Ms Brits who then granted judgements. The Appellant would give Ms Brits money, pay her debts including paying for her rent, car instalment and even giving her a bank card to use on her own.

Issues

[8] At issue in this appeal is whether the court *a quo* treated the evidence of a single witness, Ms Brits, who is also a section 204 witness or accomplice with caution and whether the State proved its case beyond reasonable doubt.

Legal Framework

[9] In *S v Monyane and others*,[1] the learned Ponnan JA stated:

> "This court's powers to interfere on appeal with the findings of fact of a trial court are limited. ... In the absence of demonstrable and material misdirection by the trial court, its findings of fact are presumed to be correct and will only be disregarded if the recorded evidence shows them to be clearly wrong (*S v Hadebe and Others* 1997 (2) SACR 641 (SCA) at 645e – f)."

[10] The authors Schmidt and Rademeyer Law of Evidence (Services Issue 21, May 2023) at 3-40, summarised how evidence is assessed on appeal as follows: "When an appeal is lodged against a trial court's findings of fact, the appeal court takes into account that the court a quo was in a more favourable position than itself to form a judgment because it was able to observe witnesses during their questioning and was absorbed in the atmosphere of the trial from start to finish. Initially, therefore, the appeal court assumes that the trial court's findings were correct, and it will normally accept those findings unless there is some indication that a mistake was made."

[11] In *S v Trainor*,[2] Navsa JA stressed that whether it be to convict or to acquit the court must account for all the evidence, some of the evidence might be found to be false; some of it might be found to be unreliable; and some of it might be found to be only possibly false or unreliable; but none of it may simply be ignored. A conspectus of all the evidence is required.

[1] 2008 (1) SACR 543 (SCA) para 15.
[2] 2003 (1) SACR 35 (SCA) para 8 and 9.

[12] In *S v Kuyler and Others*,[3] the court said the following regarding section 204 witness:

> "In the indemnity enquiry the test is for all questions to be answered honestly and frankly. Not just some. In the main trial the evidence of a witness need not be accepted in totality to carry weight. 'Frankly and honestly on all questions' stands against trite law that in the decision-making process as to whether or not to accept the evidence of an accomplice who testifies under the auspices of section 204 on the merits in the main trial, it is not expected of the accomplice that his testimony is wholly truthful in all he says. His testimony would suffice if it is to a large extent truthful and sufficient corroboration thereof exists."

Analysis

[13] Regarding the issue of the section 204 witness, the court *a quo* made a finding that the witness, Ms Brits, did not answer questions honesty and truthfully and subsequent thereto the witness was not granted immunity. It is correct to say that the witness did not answer questions that implicated her hence the court found that she did not answer questions honestly and truthfully. Does it mean, therefore, that the whole evidence of the witness must not be accepted simply because she did not tell the truth on certain aspects, the answer is, in my view, in the negative.

[14] It is clear that the court *a quo* considered the evidence in its totality in order to convict, it did not consider the evidence on a piece meal approach or considered certain evidence in isolation. The record is clear that this was the approach that the *court* a quo adopted. Consequently, it makes sense that indemnity in terms of section 204 was denied on the basis that some of the evidence of Ms Brits was found to be false and unreliable and some of her evidence was found to be reliable. The court *a quo's* approach to the evidence is supported by the decision of *S v Kuyler and Others* referred to *supra* in para 9 of this judgement, which I agree with.

[3] 2016 (2) SACR 563 (FB) para 44.

[15] I agree that there must be sufficient corroboration for the witness testimony that indeed a corrupt relationship between her and the Appellant existed. The court *a quo* finds that there was such a relationship, and its finding is based on the fact that a mutual beneficial relationship existed in the sense that the Appellant was giving Ms Brits money, paying for her car, rented her house, school fees and had even given her a banking card to utilise unrestricted during holidays.

[16] The explanation that the Appellant proffered for her financial support to Ms Brits was that the money was for a loan, which was duly repaid in cash. The Appellant was well aware of the financial position of Ms Brits as she was the one who helped her to be placed under administration. It is improbable that Ms Brits would be able to reimburse the loan money if she was placed under administration and was earning between R5000 and R6000 per month. The Appellant as an attorney knew or ought to have known that Ms Brits who was put under administration would not be in a position to repay a loan of the magnitude of money she was giving to Salome Brits.

[17] Another explanation the Appellant proffered for the reimbursement of the loan was that Ms Brits' fiancé, Mr Wayne, was the one who was reimbursing her with cash money. She said that Mr Wayne was employed and was well paid at his employment. Surprisingly, she said she gave Ms Brits the card because she did not want to carry money in her bag as Mr Wayne would take it. Mr Wayne is painted as irresponsible when it comes to money but at the same time it is said he was the one who was reimbursing the loans. This to me is not only improbable but also paradoxical.

[18] The Appellant is not in denial that the files were taken to her place and put into a rondavel. These files were immediately removed and taken to the Magistrate office after it emerged that there were investigations over them. There would never be a need to remove the files if there was nothing illegal happening about them. The argument that the court *a quo* erred in finding that the State has proven a nexus between payments made by the appellant to the witness, Ms Brits, as gratification for

Ms Brits to wrongfully issue and/or sign high amounts of section 65J orders for the benefit of Bayport is unsustainable.

[19] The court *a quo* delivered itself of a careful and well-reasoned judgment. It is apparent, both from the judgment and the treatment of the evidence, that the court was at all times aware, when considering Ms Brits' evidence, that it was dealing with an accomplice who was also a single witness.

[20] Consequently, this Court has no doubt as to the correctness of the court *a quo's* factual findings. I can find no misdirection which warrants this Court's interference with the judgement of the court *a quo*. The court *a quo* correctly found that the State proved the guilt of the Appellant beyond reasonable doubt, and correctly rejected the version of the Appellant as not reasonably possibly true.

Order

[21] In the result, I propose the following order:

The appeal against conviction is dismissed.

MANTHATA AJ

ACTING JUDGE OF THE HIGH COURT

MPUMALANGA DIVISION, MBOMBELA

I agree

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B A MASHILE

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MBOMBELA

Delivered: This judgment is handed down electronically by email to the parties.

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