REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION, GRAHAMSTOWN)

In the matter between: Case No: CA & R 197/2012

NEIL TERBLANCHE **Appellant**

And

THE STATE **Respondent**

Coram: **Pickering**, **Chetty and Plasket JJJ**

Heard: **27 January 2015**

Delivered: **5 March 2015**

Summary: ***Criminal Law*** *– Appeal – Against sentence – Inviolability of trial court's factual findings on merits – Applicable principles – Alleged disproportionality between sentence imposed on appellant and co-accused – Appellate interference unwarranted – Appeal dismissed*

JUDGMENT

Chetty, J

[1] This is an appeal directed solely against a sentence of ten (10) years imprisonment imposed on the appellant following his conviction on a charge of

fraud. It is apposite, notwithstanding the triteness of the legal principles pertaining to appeals against sentence, to commence this judgment with a restatement of the proper approach thereto. It was articulated thus by Olivier JA in ***S v Kibido***[1]:-

> ". . . the determination of a sentence in a criminal matter is pre-eminently a matter for the discretion of the trial court. In the exercise of this function the trial court has a wide discretion in (a) deciding which factors should be allowed to influence the court in determining the measure of punishment and (b) in determining the value to attach to each factor taken into account (see S v Fazzie and Others 1964 (4) SA 673 (A) at 684A - B; S v Pillay 1977 (4) SA 531 (A) at 535A - B)."

[2] It behoves me further, as a precursor to a consideration of the validity of the submissions advanced on behalf of the appellant, to dispel the notion that the dictates of justice require us to revisit the trial court's factual findings on the merits. Suffice it to say that this court is not competent to consider the merits of the conviction[2]. During his address in the application for leave to appeal, counsel for the appellant expressly refrained from making any submissions on the merits. The argument advanced was confined solely to the propriety of the sentence

[1] 1998 (2) SACR 214 (SCA) at 216g-j
[2] S v Mamkeli 1992 (2) SACR (5) (A.D)

imposed. The court *a quo* dismissed the application for leave to appeal against the conviction but granted leave only against the sentence imposed. Notwithstanding, the appellant's prolix heads of argument contain copious references to evidence adduced on the merits in order to persuade us that the trial court's factual findings require revisitation. In argument before us appellant's counsel verbalized such invitation. We decline the request. It is disingenuous, under the guise of an appeal against sentence, to inveigle an appellate court to embark upon a reconsideration of a trial court's factual findings. The appropriateness of the sentence imposed must be considered solely in light of the trial court's factual findings extant the judgment on the merits and sentence.

[3] As a precursor to determining the appeal, it is instructive to have regard to the factual substratum of the appellant's conviction. He featured as the fourth accused amongst six (6) persons arraigned for trial before Kroon J on a main charge of fraud and several other counts. The trial, colloquially referred to as the Clifford trial, in deference to the first accused, endured for several years. It commenced on 12 October 2004, judgment being handed down on 31 October 2008. The gravamen of the charges against the accused was that they, in furtherance of a common purpose, unlawfully and with intent to defraud, made divers misrepresentations to multiple persons which caused them actual prejudice or was potentially prejudicial to them. The main vehicle through which the fraud was perpetrated was a trust, the Usapho Trust (Usapho), of which accused no's one (1) and two (2) were trustees[3] whilst accused no. three (3) was

[3]Together with one other person.

an employee primarily tasked with the recruitment of investors. The appellant and the remaining accused were employed as bank officials at Absa Bank in Port Elizabeth through which Usapho's operational account was conducted.

[4] At the conclusion of the trial accused no. five (5) was acquitted on all charges and the remaining accused, including the appellant, were convicted of fraud as referred to in paragraph (a) and (b) of Schedule II of the ***Criminal Law Amendment Act***[4]. Such convictions attracted the mandatory sentence of fifteen (15) years imprisonment absent a finding by the trial court that there were substantial and compelling circumstances which justified a lesser sentence than that ordained by the legislature. The trial court found that the accused had indeed established the requisite substantial and compelling circumstances which rendered the ordained sentence unjust and sentenced them as follows: -

Accused No. 1:

Count 1: Twelve (12) years imprisonment;

Count 2: Two (2) years imprisonment, which sentence will run concurrently with the sentence imposed on count 1.

Accused No 2:

Ten (10) years imprisonment.

Accused No 3:

[4]Act No, 105 of 1997

1. Three (3) years imprisonment wholly suspended for a period of five (5) years on certain conditions.

2. The accused is placed under correctional supervision in terms of s 276(1)(h) of the ***Criminal Procedure Act 51 of 1977*** for a period of three (3) years, subject to certain conditions. . .

Accused No. 4:

Ten (10) years imprisonment.

Accused No 6:

1. Three (3) years imprisonment wholly suspended for a period of five (5) years on certain conditions.
2. The accused is placed under correctional supervision in terms of s 276(1)(h) of the ***Criminal Procedure Act 51 of 1977*** for a period of three (3) years subject to certain conditions. . .

[5] It was not contended on appeal that the trial court misdirected itself in any specific way. The sole ground upon which the appeal is predicated is that the sentence is shockingly inappropriate regard being had to (i) the limited role played by the appellant, (ii) the inappropriately light sentences imposed upon

accused no's three (3) and six (6) notwithstanding their substantially greater involvement in the affairs of Usapho, and (iii) the admitted fact that the appellant derived no financial or other benefits whatsoever. Allied to the ***"shockingly inappropriate"*** element of the challenge to the custodial sentence imposed on the appellant, is the application to lead further evidence relating to the appellant's current personal circumstances. Those factors, counsel for the appellant urged upon us, militated against upholding the sentence imposed.

The Application to lead further evidence

[6] The further evidence sought to be adduced is in the form of affidavits by the appellant and his spouse which, counsel for the appellant informed us, document the appellant's successful business endeavours, track record and family life consequent upon his release on bail pending the appeal. The statutory regime relative to an appeal against sentence is s 322(2) of the ***Criminal Procedure Act***[5] which provides that upon an appeal against sentence, the court of appeal may confirm the sentence or it may delete and amend the sentence and impose such punishment as ought to have been imposed at the trial. There is a long line of authority to the effect that an appellate tribunal may only take account of the circumstances which existed at the time the trial court imposed its sentence. Corbett JA expressed the position thus in ***S v Immelman***[6],

[5]Act No, 51 of 1977
[6]1978 (3) SA 726 (A) at 730H

> "The general rule is that this Court must decide the question of sentence according to the facts in existence at the time when the sentence was imposed and not according to new circumstances which came into existence afterwards (R v Hobson1953 (4) SA 464 (A) at 466A) and, even if there are exceptions to this rule (see Goodrich v Botha and Others1954 (2) SA 540 (A) at 546A - C), this case does not appear to constitute such an exception."

[7] In argument before us, counsel for the appellant urged us to find that there were exceptional circumstances which compelled the adduction of the further evidence. Contextually, the phrase "***exceptional circumstances***" is of recent vintage. In ***Immelman***, Corbett JA, whilst acknowledging, with reference to the dictum in ***Goodrich v Botha and Others***[7], that there may be exceptions to the general rule, found that the new evidence was clearly not that envisaged in ***Goodrich***. In ***S v Swart***[8], Nugent JA, responding to the proposition that exceptional circumstances permitted the reception of further evidence, succinctly stated the legal position thus: -

[7]1954 (2) SA 540 (A) at 546A-C
[8]2004 (2) SACR 370 (SCA) at para [b-d]

> "[6] . . . I have assumed that this Court may indeed admit further evidence in exceptional circumstances, bearing in mind particularly that a court is bound to ensure that every accused is given a fair trial as provided for in s 35(3) of the Bill of Rights. In the present case no such circumstances exist, for the evidence that is sought to be adduced does not take the matter further and its exclusion cannot prejudice the respondent. To the extent that the evidence is admissible at all it constitutes no more than confirmation that the respondent has thus far observed all the terms of the sentence that the trial Court imposed and that he is a person who is ordinarily polite and well-behaved. We would, in any event, assume that the respondent is complying with the terms of his sentence (if that were to be relevant) and the respondent's character was in any event established before the trial Court. The evidence accordingly adds nothing material and no purpose is served by admitting it."

[8] The fallacy in the argument advanced before us arises from the conflation of the term ***"exceptional circumstances"*** with the appellant's current personal circumstances. The facts that (i) six (6) years have elapsed since sentence was imposed, (ii) the appellant was incarcerated for eight (8) months, and (iii) has in the interim remarried and become a successful businessman, may be mitigatory, but do not themselves, constitute the exceptional circumstances that would justify their admission as evidence. In other words, the factors may have been relevant

to a reconsideration of the appellant's sentence had exceptional circumstances been present to justify a taking into account of factors not in existence at the time sentence was imposed.

Alleged disproportionality of the comparative sentences

[9] Central to the argument advanced that appellate interference with the sentence imposed by the court *a quo* was indeed justified, was the skewed comparative analysis of the respective roles of the appellant's co-accused and the sentences imposed on them, particularly the erstwhile third and sixth accused. It is trite law that an appellate tribunal may, in an appeal against sentence, interfere with the sentence on the ground that the sentence imposed upon the appellant is disturbingly inappropriate when compared to the sentence imposed upon a co-accused. The power to do so is however, not unlimited.

[10] The proper approach was articulated by Smalberger JA in ***S v Marx***[9], with reference to earlier authority, as follows: -

> "As 'n algemene beginsel poog ons howe om sover doenlik gelyke deelname aan 'n misdaad eenvormig te straf, tensy die betrokke misdadigers se uiteenlopende persoonlike omstandighede ongelyke vonnisse regverdig. Dit is belangrik dat by vonnisoplegging geregtigheid nie alleenlik moet geskied nie, maar duidelik moet blyk te geskied, uit die oogpunt van sowel 'n beskuldigde as die publiek. Ongelyke strawwe op

[9] 1989 (1) SA 222 (A) at 225B-226B

gelyke misdadigers ten opsigte van dieselfde misdryf druis teen die algemene gevoel van geregtigheid in (Du Toit Straf in Suid-Afrika op 118). Dit is makliker om eenvormigheid van straf te bewerkstellig waar gelyke misdadigers saam verhoor en gevonnis word as in die geval van aparte vehore. In laasgenoemde geval kan wesenlike verskille in vonnisse meer geredelik voorkom. Waar dit gebeur blyk die benadering wat op appèl gevolg moet word uit die beslissing in S v Giannoulis 1975 (4) SA 867 (A). na ‘n oorsig van die tersaaklike gewysdes vat Holmes AR die beginsels wat van toepassing is as volg saam (op 873F-H):

‘1. In general, sentence is a matter for the discretion of the trial court. Disparity in the sentence imposed on participants in an offence (whether tried together or in separate courts) will not necessarily warrant interference on appeal. Uniformity should not be elevated to a principle, at variance both with a flexible discretion in the trial court and with the accepted limitations of appellate interference therewith.

2. Where however, there is a disturbing disparity in such sentences, and the degrees of participation are more or less equal, and there are not personal factors warranting such disparity, appellate interference with the sentence may, depending on the circumstances, be warranted. The ground of interference would be that the sentence is disturbingly inappropriate.

3. In ameliorating the offending sentence on appeal, the Court does not necessarily equate the sentences: it does what it considers appropriate in the circumstances.’

Hieruit blyk dit duidelik dat ‘n Hof van appèl nie ‘n onbelemmerde diskresie het om in te meng met ongelyke vonnisse wat ten opsigte van gelyke deelname aan dieselfde misdaad opgelê is nie. Inmenging kan allenlik geskied volgens

> die riglyne neergelê in Giannoulis se saak. Soos blyk uit die tweede stelling, geskied inmenging waar die opgelegde vonnis ontstellend onvanpas (‘disturbingly inappropriate’) is. Uit die samehang blyk dit dat Holmes AR nie hier in gedagte gehad het die geval van ‘n vonnis wat ontstellend onvanpas is geoordeel bloot aan die feite en omstandighede van die betrokke misdaad nie. Die vraag of the vonnis waarteen geappelleer is ontstellend onvapas is, moet klaarblyklik beantwoord word aan die hand van ‘n vergelyking tussen daardie vonnis en die minder vonnis wat opgelê is op ‘n veroordeelde met ‘n gelyke aandeel in die pleging van dieselfde misdaad, en met vergelykbare persoonlike omstandighere. Selfs al is daar ‘n treffende verskil tussen die twee vonnisse wanneer hulle vergelyk word, beteken dit nie noodwendig dat daar ingegryp sal kan word nie. Daar is ‘n verdere vereiste. Ingryping is alleenlik geregverdig as die ligter vonnis ‘n redelike of gangbare vonnis is. Slegs dan, weens die wanverhouding in die vonnisse, kan die swaarder vonnis versag word as synde ontstellend onvanpas. Waar die ligter vonnis egter as onredelik of duidelik onvanpas aangemerk kan word, en die swaarder vonnis in al die omstandighede ‘n gepaste een is, sou ingryping met, en versagting van, laasgenoemde vonnis nie geoorloofd wees nie, desondanks die wanbalans wat die vonnisse betref. Geregtigheid vereis dat gepaste strawwe opgelê moet word. Die stelling in S v Moloi and Another 1987 (1) SA 196 (A) op 224A is onderhewig aan bogemelde kwalifikasie.”

[11] The submissions advanced on behalf of the appellant justifying interference on this score are untenable. Firstly, they conveniently ignore the trial court’s factual findings *qua* the appellant’s and his co-accused’s level and extent of involvement in the pyramid scheme and, secondly, relegate the qualification

expressed in the last sentence of the passage in ***Marx*** reproduced in paragraph [10] above, to insignificance.

[12] It is apparent from the trial court's judgment that the appellant's involvement in the perpetration of the fraud was crucial to its success. The trial court's factual findings were expressed thus: -

> "[111] U ook het 'n leidende rol in die bedrogspul gespeel, jeens beide beleggers sowel as ABSA. U het ook deurentyd berekend in u volgehoue optrede volhard. Inderdaad, was u die brein agter en die aanstigter van die manipulering van Usapho se bankrekeninge by ABSA wat op grootskaal en in verskeie vorms uitgevoer is, insluitende die wisselruitery. En nie alleen het u direk 'n aansienlike getal beleggers bedrieg deur aan hulle valse gerusstelling te gee oor die veiligheid van 'n belegging by Usapho nie, maar u het ook Usapho van valse skrywes oor sy finansiële status en die wyse waarop sy bankrekening bedryf word voorsien, welke skrywes met u medewete aangewend is om beleggers gerus te stel en te bedrieg. Weer eens stel hierdie faktore ernstige verswaring daar."[10]

[13] The aforegoing synopsis finds resonance in the main judgment. In the introductory paragraphs, the trial court, with particular reference to the allegations extant the indictment, that the appellant and his co-accused not only acted in furtherance of a common purpose but moreover that Usapho's financial position

[10]Volume 17, page 1727

was such that by reason of its business viability, it could meet its obligations to each individual member, found that in his capacity as a relationship manager within the hierarchical structure of the bank, the appellant occupied a special position vis-à-vis the bank's clientele. The trial judge then, with reference to letters written by the appellant, stated the following -

> "(c) Paragraaf (c) verwys na getuies wat getuig het dat 'n afskrif van 'n ongedateerde brief deur beskuldigde 4 (in sy hoedanigheid as verhoudingsbestuurder van die Clifford-groep se rekeninge) onderteken (bw V12), aan hulle deur die persoon in die paragraaf aangedui, voorgelê is. Hierdie brief, op 'n ABSA briefhoof, het soos volg gelui:
>
> "TO WHOM IT MAY CONCERN
> M CLIFFORD GROUP
> Mrs Clifford has various accounts in our books since 1990 which is conducted on a active and satisfactory manner. No dishonours on record an all engagements are met promptly. The client is honest and reliable and unlikely to over commit. We consider the Group good for all normal business engagements. Estimated annual turnover amounts to R75 million. The group has various properties which are bonded to ourselves with an estimated value of R3.5 million.
> We trust you will find the above in order". (sic)
>
> (d) Paragraaf (d) verwys na getuies wat getuig het dat 'n afskrif van 'n verdere brief (bew V62) gedateer 28 Februarie 2000 en ook deur beskuldigde 4 (in sy hoedanigheid as verhoudingsbestuurder van die Clifford-groep se rekenings)

> onderteken, aan hulle voorgelê is. Hierdie brief, ook op ‘n ABSA briefhoof, het soos volg gelui:
>
> “TO WHOM IT MAY CONCERN
> USAPHO TRUST – ACCOUNT NUMBER: 40-4752-4336
> Various accounts in our books since 1990. All accounts are conducted active and satisfactory with no dishonours on record. We consider them good for normal business engagements and are unlikely to over-commit themselves.”[11]

[14] In its analysis of the evidence relating to the aforesaid letters, the trial court *inter alia* referred to the testimony of Mr *H.S. van Zyl* that the appellant’s swift assuasive response to his query relating to the inviolability of his investment mollified him. The trial court made the following factual findings: -

> “[598] Nadat H S van Zyl (van Oos-London) om en by Maart 2000 gerugte oor Usapho se finansiële welstand gehoor het wat hom onrustig gemaak het het hy Usapho gekontak met die bedoeling om sy belegging (van R500 000,00) op te vra. Hy is meegedeel dat as gevolg van die Halgryn geval ondervind Usapho groot probleme, maar dat hulle besig is om dit uit te sorteer, as hy gemoedsrus wil hê hy Neil Terblanche by ABSA hooftak kon bel. Hy maak so en praat met die persoon. Hy het toe ‘n bevestigende brief aangevra, dat alles wel in die haak is. Hy het toe onmiddelik, binne ‘n kwessie van ‘n minuut, ‘n brief per faks ontvang. Bew V1587 is ‘n afskrif wat hy van die brief wat hy ontvang het gemaak het. Dit is ‘n afskrif van bew V12. Hy het toe sy poging om sy geld te onttrek laat vaar.

[11] Volume 2, page 214-215

[599] Genoem moet word dat van Zyl ook getuig het dat voor hy sy belegging op 15 Desember 1998 gemaak het hy met ‘n ABSA bankamptenaar gepraat het na wie hy deur beskuldigde 1 verwys is. Dié het Usapho ‘n goeie getuigskrif gesê. Onder kruisondervraging het hy erken dat in sy eerste polisieverklaring (bew V1588 et seq) hy gesê het dat die betrokke skrywe toe aan hom deurgefaks is. Hy het egter verduidelik dat sy verklaring jare na die gebeure geneem is en, wyl hy onder die verkeerde indruk verkeer het, het hy hom verspreek toe hy aangedui het dat hy toe reeds die skrywe ontvang het. (Inderdaad, is dit duidelik dat hy nie die brief, wat toe nog nie bestaan het nie, destyds kon ontvang het nie).

Hy het ook in die verklaring (as ook in ‘n tweede verklaring) gesê dat by daardie aangeleentheid hy met Neil Terblanche gepraat het. Weer eens het hy egter aangedui dat hy dit nie kan bevestig nie, dit kon ‘n fout gewees het, te wyte aan rekonstruksie aan sy kant omrede hy wel met Neil Terblanche in Maart 2000 gepraat het. Dit is tydens konsultasie aan hom uitgewys dat in 1998 was beskuldigde 4 nog nie aan ABSA hooftak verbonde nie.

[600] Aan hom is gestel day hy nie die brief waarna hy verwys het gedurende Maart 2000 kon ontvang het nie want dit is eers deur beskuldigde 4 gedurende Meimaand geskep. Ook is aan hom uitgewys dat daar in Maart ‘n ander brief (die verwysing was na bew V62) was wat die rondte gedoen het en is hy gevra of hy seker is oor die feite wat hy voorhou. Die getuie het by sy getuienis gebly. Voorts is pertinent gestel dat beskuldigde 4 geen brief aan die getuie beskikbaar gemaak het nie nóg het hy enige gesprek met die getuie gehad. Die antwoord was dat hy definitief die brief ontvang het wat hy beklemtoon het binne ‘n minuut of twee na die gesprek plaasgevind het. Hy het egter die moontlikheid toegegee dat Usapho die brief aan hom gefaks het.

> [601] Van Zyl het my as getuie beïndruk, en die beskuldigde se geloofwaardigheid weeg nie teen syne op nie. Die getuie se hele weergawe maak sin en is ‘n waarskynlike een van hoe dit gekom het dat hy met die beskuldigde gepraat het. Die afleiding is dat beskuldigde 4 óf die brief aan die getuie gefaks het óf gesorg het dat Usapho dit deurfaks.
>
> [602] Wat beklemtoon moet word is die volgende. Eerstens, van Zyl se getuienis staaf die van die ander getuies elders in hierdie uitspraak na verwys dat bew V12 nie eers in Mei 2000 opgestel is nie. Ten tweede, soos met die ander getuienis, bewys van Zyl se getuienis dat beskuldigde 4 nie alleen geweet het dat sy briewe aan voornemende beleggers voorgelê word nie maak ook dat hy inderdaad deel daaraan gehad het dat hulle aan beleggers beskikbaar gemaak word. Ten derde, is die getuienis ‘n verdere voorbeeld van die afdoende weerlegging van die beskuldigde se bewering dat die doel van die briewe was dat hulle as ‘n tipe bankrapport moes dien ten einde beskuldigde 1 in staat te stel om finansiële fasilitiete by ‘n ander instansie te bekom. Ten vierde, tot beskuldigde se wete, soos elders in hierdie uitspraak uitgewys word, was die inhoud van die briewe erg misleidend, inderdaad vals, en berekend om ‘n belegger wat dit lees wesenlik om die bos te lei oor die verdienste van ‘n belegging by Usapho.”[12]

[15] In argument before us Mr *Price* sought to impugn the trial court’s findings hereanent by referring to the retraction letter written by the appellant. The submissions made hereanent are devoid of all merit. The trial court found, as a fact, that the appellant’s evidence relative hereto was false. The letter read: -

[12]Judgment – Volume 6, page 585 et seq

> ““Geagte Maureen
> BANKRAPPORT
> Met verwysing na ons telefoniese gesprek insake die gebruik van die ongedateerde bankrapport wat op u versoek aan u veskaf was, bevestig ons weereens per skrif dat hierdie bankrapport slegs geld vir die dag waarop dit uitgereik was en nie as ‘n oop bankrapport beskou mag word nie. Bankrapporte word ook uitgereik sonder aanspreeklikheid teen die Bank of sy werknemers.
> Graag versoek ons u om die gebruik hiervan te staak en die rapport te vernietig of in te dien by die Bank.
> U samewerking in die verband sal waardeer word.”[13]

With reference to the letter, the learned judge found as follows:

> “Verskeie oorwegings dui op die valsheid van hierdie getuienis. Op ‘n stadium het die beskuldigde laat blyk dat hy nie kon onthou of die brief wat die oproeper na verwys het bew V12 of bew V62 was nie, wat dermate weersprekend was van wat hierbo gekonstateer is. Die beskuldigde het getuig dat toe hy beskuldigde 1 gebel het hy redelik geïrriteerd was, tóg sou die beweerde retraksiebrief weer op 28 Junie 2000 versend gewees het. Moontlike verduidelikings vir dié vertraging deur die beskuldigde geopper was dat sy ondervraging deur Cutting op 20 Junie plaasgevind het, of dat Mandy op 26 Junie oorlede is of dat sy tikster versuim het om aandag aan die tik van die brief gegee het. Die verduidelikings gaan nie op nie. Meer belangrik egter is die volgende twee aspekte. Eerstens, wat skitter by sy afwesigheid is enige aantyging in the beweerde retraksiebrief dat beskuldigde 1 die brief, bew V12 misbruik deur dit aan beleggers beskikbaar te maak, wat die einste

[13]Volume 4, page 364

> beweerde klagte was wat beskuldigde 4 sou gehad het, en in plaas daarvan word ‘n ander klagte genoem, nl dat die brief gebruik word op dae anders as dié waarop dit uitgeruik is. Ten tweede, na bewering is dit duidelik aan beskuldigde 1 telefonies gestel dat sy nie meer beleggers na beskudligde 4 moet vewys nie en daarna is sy formeel op skrif aangemaan om gebruik van die brief te staak; tóg op die einste volgende dag na ontvangs van die beweerde retraksiebrief gee beskuldigde 1 bew V12 aan mev Vockerodt en raai sy haar aan om beskuldigde 4 te kontak in verband met Usapho se finansiële welstand. Wat daarby aansluit is dat, soos later aangetoon sal word, beskuldigde 1 by latere geleenthede nog verskeie ander beleggers na beskuldigde 4 verwys het. Beskuldigde 4 se beweerde opdragte aan beskuldigde 1 en laasgenoemde se optrede is net nie met mekaar te versoen nie. Die afleiding is dat nadat hy deur Cutting ondervra is, bekuldigde 4 die retraksiebrief laat tik het bloot as ‘n rookskerm”[14]

[16] The parallelism sought to be drawn between the participation of the appellant and the erstwhile accused no’s three (3) and six (6) (*van Rooyen* and *Visagie* respectively) in the fraud proceeds not only from an erroneous understanding of the evidence adduced, but, more importantly, a total disregard of the trial court’s factual findings. One searches the transcript in vain for any comparable degree of involvement between the appellant, *van Rooyen* and *Visagie* in Usapho’s affairs. The judgment delineates their individual conduct and emphasizes the greater role played by the appellant. It is furthermore readily apparent from the judgment that the appellant, *van Rooyen* and *Visagie’s*

[14]Volume 4, pages 364-365

personal circumstances were entirely disparate. Reliance on the alleged disproportionality of the sentences imposed is entirely misplaced upon a proper analysis of the trial court's factual findings. There is no proper basis warranting interference with the sentence imposed by the trial court.

[17] In the result, the following order will issue: -

The appeal is dismissed.

_____

D. CHETTY
JUDGE OF THE HIGH COURT

Pickering, J

I agree.

_____

J.D PICKERING
JUDGE OF THE HIGH COURT

Plasket, J

I agree.

_____

C. PLASKET
JUDGE OF THE HIGH COURT

On behalf of the Appellant:	*Adv T Price*
Instructed by	*Roelofse & Meyer Attorneys, 29 Bird Street, Central, Port Elizabeth* *Ref: Mr Meyer* *Tel: (041) 585 3270*
On behalf of the Respondent:	*Adv M Stander* *Director of Public Prosecutions, Port Elizabeth* *Tel: (041) 405 1400*