



Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Regional Magistrates:	YES / NO
Circulate to Magistrates:	YES / NO

IN THE HIGH COURT OF SOUTH AFRICA (Northern Cape Division, Kimberley)

Case number: **CA & R 8/2022**

Date heard: **31 / 10 /2022**

Date delivered: **05/06 /2023**

In the matter between:

SONJA MOROLONG

First Appellant

BOITUMELO SEHAKE

Second Appellant

and

THE STATE

Respondent

Coram: Phatshoane DJP and Sieberhagen AJ

JUDGMENT ON APPEAL

SIEBERHAGEN AJ

Introduction:

[1] The first appellant, Ms Sonja Morolong, and the second appellant, Ms Boitumelo Sehako, were arraigned in Regional Court, Douglas, before Magistrate V Smith, on 23 counts of fraud (counts 3 to 26) and one count of money laundering (count 27). In addition, the first appellant faced one count of corruption (count 1) and one count of money

laundering (count 2). On 11 November 2018 the first appellant was convicted on one count of corruption (count 1) and both appellants were convicted on the 23 counts of fraud.

- [2] All counts were taken together for the purpose of sentencing. On 28 November 2018, the first appellant was sentenced to five years imprisonment whereas the second appellant was sentenced to three years imprisonment. Both appellants applied for leave to appeal against their convictions and sentences, but leave to appeal was only granted in respect of their convictions. The appeal is therefore directed at their convictions only.

The Background:

- [3] In respect of count 1, the State contended that the first appellant contravened section 3(a) of the Prevention and Combating of Corrupt Activities Act 12 of 2004 (Corruption Act) read with sections 1, 2, 24, 25 and 26 of the Corruption Act in that between July 2014 and August 2014 at Douglas, Northern Cape, the first appellant, acting in concert and in the furtherance of a common purpose or alternatively Mr Moses Mathee (Mr Mathee) acting as an accomplice to first appellant, deliberately over-paid Mr Plaatjie Bassie wages in the amount of R4,455.00 as opposed to R800.00 which was equal to the number of days that Mr Plaatjie Bassie had worked for. The State contended that Mr Mathee participated in this scheme and made it possible for the gratification to be paid over to the first appellant by insisting that Mr Plaatjie Bassie withdraw the money and hand it over to the first appellant. Mr Plaatjie Bassie benefited from the remaining amount in terms of the agreement between the parties which allowed Mr Bassie's bank account to be used as a conduit for theft.
- [4] In respect of counts 3 to 26, the State contended, in summary, that during June 2014 and July 2014, the first and second appellants, acting in concert and in the furtherance of a common purpose or Mr Moses Mathee acting as an accomplice to the appellants did

unlawfully, falsely and with the intent to defraud, misrepresent to the Siyancuma Municipality (municipality) in making payments to individuals who they allege were employees but had not performed any work for the municipality for the period in respect of which they were paid, resulting in the municipality suffering financial prejudice in the amount of R72,801.60.

[5] Both appellants pleaded not guilty to the charges. The first appellant elected to exercise her right to remain silent whereas the second appellant denied all the allegations in the charge sheet. The State called 30 witnesses. Some of the material evidence adduced can be summarised as follows:

5.1 Mr Richard Paul Williams testified that Mr Moses Mathee collected his Identification Document (ID). Shortly thereafter, Mr Mathee picked him up and drove with him to a resort where he received a cheque. Mr Mathee's wife, Ms Bettie Boom, later informed him that Mr Mathee said that he must keep R300.00 of the money and give the rest of the money to her, which he did.

5.2 Mr Brian van Rooi saw the first appellant at the resort when he received a cheque from the municipality. The only work they did for the municipality was to pick up papers at the resort. After he had received his cheque, he withdrew the money and gave it to Ms Bettie Boom who gave him R300.00 of the money and retained the rest.

5.3 Mr Timoteus Albertus testified that he received a cheque at the resort. He withdrew the money and, on the instruction of Mr Mathee, gave it to Ms Bettie Boom who then gave him R300.00.

5.4 Ms Grace Plaatjies testified that Mr Mathee came to fetch her ID. The next day, Mr Plaatjie Bassie picked her up and took her

to the resort. She refused to sign for the cheque and indicated that she assumed that Moses Mathee had signed the register on her behalf. After she received her cheque, she withdrew the money and gave it to Ms Bettie Boom who in return gave her R300.00.

- 5.5 Ms Mary Williams testified that she knew both the appellants and that they worked in the same office at the municipality. Mr Mathee came to her house and told her that there was work available at the resort. She went with him to the resort where she received a cheque. She withdrew the money and gave it to Ms Bettie Boom. She did not receive any money from Ms Bettie Boom because Mr Mathee had told her that the appellants would employ her. Mr Mathee requested her bank account details and money was later paid into her bank account. She assumed that the appellants made this payment because they worked with salaries at the municipality. The first appellant informed her that the municipality had made a mistake and that she must fetch the money from Juanita and Lizelle and bring it to her. She withdrew the money. Mr Mathee requested her to return the money to the municipality and give it to the appellants. She, Ms Doreen Barry and Ms Chantell Visser proceeded to the municipality to give the money to the second appellant. She handed the money over to the first appellant while they were seated in the vehicle of the second appellant in the latter's presence. The second appellant promised to employ her. This came to fruition because she commenced working at the power station on 1 August 2014. The employment was of a short duration because on 26 August 2014, the second appellant terminated her services. In the presence of Mr Mathee, the first appellant and the auditor at the resort, she had enquired why she was receiving money but was reprimanded and told not to ask many questions. She admitted that she was angry with the second appellant because of the termination of her employment.

- 5.6 Ms Juanita Gabriel received money from the municipality on two occasions. On the first occasion, she received a cheque at the resort, which she cashed and gave the money to Ms Bettie Boom. On the second occasion, the money was paid into her bank account. She withdrew the money and gave that money, together with the money she received from Ms Lizelle Adams to Ms Mary Williams. She does not know the second appellant and never had any contact with her.
- 5.7 Ms Lizelle Adams testified that Ms Mary Williams had informed her that Mr Mathee had advised her telephonically that the municipality had made a mistake in paying the money into her bank account. Mary Williams left with the money she received from her and Juanita. She denied that she accompanied Ms Mary Williams to the municipality, but she saw Ms Mary Williams and the two appellants sitting in a maroon vehicle in front of the municipality. She never saw money being handed over to the appellants.
- 5.8 Ms Doreen Barry testified that Ms Mary Williams came to fetch her ID and her bank particulars. Ms Williams brought pressure upon her to hand over the money to Ms Williams after the withdrawal of the cash. She denied that she accompanied Ms Williams to the municipality to hand over the money. She does not know the appellants.
- 5.9 Ms Chantelle Visser withdrew the money that was paid into her bank account at the request of Mr Mathee. He gave R1,000.00 to Ms Mary Williams who then gave her R300.00 back.
- 5.10 Mr Andre Serven does not know the appellants. He is a relative of Mr Mathee. Serven and his wife were involved in an arrangement regarding the withdrawal of monies. Mr Serven was entitled to share but only to a limited amount.

- 5.11 Mr Cargo Pause never worked at the municipality. On 31 July 2014, he received R2,270 from the municipality. Mr Mathee collected his bank card to withdraw the money. Mathee gave him R300.00. Mr Mathee further informed Pause that he must indicate that he worked for the municipality and that he gave the money to two ladies if there were any queries in this regard. He got the impression that Moses wanted to use him to convince the police that the two ladies received the money.
- 5.12 Ms Bettie March testified that Mr Mathee came to fetch her ID. He returned to pick her up and gave her a cheque to pay for the goods that she had purchased. She had to give the money back to him and he then gave her R300.00.
- 5.13 Ms Elizabeth Boom testified that Mr Mathee had been in possession of her ID. He informed her of a cheque that she had to cash. She told him to ask Ms Bettie Boom to do so. Mr Mathee did not inform her what the cheque was for.
- 5.14 Mr Harold Nelson visited the municipality to hand over a copy of his ID and to furnish his banking details to the first appellant. He also received a call from Ms Mary Williams who said that she was working for the municipality. Ms Williams also told him that some money was erroneously paid into his bank account. She requested him to withdraw the money and return it. She also informed him that he would receive R250.00 for his honesty.
- 5.15 Ms Mieta Moseka testified that Mr Mathee came to collect her ID. He returned a few weeks later to pick her up and gave her a cheque to cash. She withdrew the money and gave it to Mr Mathee and in return received R300.00. She was told not to ask any questions when she enquired from him why she received the cheque.

- 5.16 Mr Dylan Nel does not know the appellants. He does not know how it happened that money was paid into his bank account. Mr Plaatjie Bassie had informed him that the money had to be returned to the municipality and he complied.
- 5.17 Ms Martie Mienies testified that Mr Mathee arranged with her to open a bank account. She received a text message (SMS) on her phone which indicated that money was paid into her bank account. When she enquired from Mr Mathee about the money, he ordered her not to 'talk so much'. She and Ms Bettie Boom withdrew the money, but she did not receive any of it.
- 5.18 Mr Andries Witbooi testified that Mr Mathee opened a bank account for him. He does not know how the municipality got hold of his banking details. Ms Bettie Boom withdrew the money from his bank account and gave him R300.00.
- 5.19 Mr Bradley Gouws knew the second appellant. Mr Mathee requested him to fetch a cheque from the appellants at the municipality. When he arrived there the second appellant enquired if he was there for work. He informed her that he came to sign for a cheque. The second appellant handed the cheque to him and he signed in the register. Mr Mathee later called him to ask for the money, which he handed to him and received R300.00 in return.
- 5.20 Ms Bettie Boom, Mr Mathee's wife, does not know the first appellant but knows that she worked for the municipality. On the occasion they were at the resort the first appellant instructed her to give to each of the members of the community in attendance R300.00 once they had cashed their cheques. The balance, she was commanded, to give back to the second appellant. After she had collected the balance of the funds, as directed, she took this to the second appellant at the municipal offices. The second appellant informed her that

the first appellant was not present but she must wait for her. When the first appellant arrived, the second appellant informed her that she will phone Mr Mathee and that they will meet at the road near the Co-operation. Mr Mathee and Ms Boom drove to the road near the Co-operation where they met the appellants. They had discussions about the price of sausages that the second appellant was selling. She then took the money that she collected and gave it to the second appellant. She denied that she received a cheque from Ms Elizabeth Boom at the resort and indicated that Mr Mathee gave it to her. She was confronted on the contradictions between her version and that of other witnesses. She intimated that the witnesses were not truthful in their account.

- 5.21 Mr Mathee was a co-accused but had pleaded guilty to the charges. When he testified, he had already been sentenced. He did not go to school and can only write his name and surname. He worked with the two appellants at the municipality. The first appellant informed him in the presence of the second appellant, that there would be work for 12 people at the municipality thus she needed 12 identity documents. He went about collecting identity documents and also received a few from Mary Williams. He took the identity document to the first appellant. When this was done the first appellant informed him to notify the identified people that they will be receiving money. The first appellant also informed him that he too would receive some money. The second appellant requested him to summon the identified individuals at the resort where the first appellant and auditor would be waiting for them.

He corroborated his wife's (Bettie Boom) evidence that they met the appellants on the road near the Co-operation. His wife gave the money to the second appellant who in turn directed Ms Boom to hand over the cash to the first appellant. Mr Mathee argued with the second appellant with regard to the

price of the sausages that the second appellant was selling. In terms of their pact, Mr Mathee was supposed to retain four “ghost workers” salaries for his benefit in respect of June 2014 and received approximately R8 000.00. He testified that he received about R5 500.00 from the first appellant in respect of the July 2014 payments. The first appellant corrected the name on an incorrect cheque that was issued in respect of a “ghost worker” for June 2014. She also requested him to provide her with the banking details of people who received cheques at the resort. He admitted that he had to repay an amount of R17 000.00 as part of his sentence. He denied that he told the identified people not to ask too many questions or that he instructed them to deny that they received any money.

- 5.22 Mr Hastings Nell, the municipal manager, testified that the first appellant was appointed as a salary clerk but she had requested to be moved to the Human Resources Department. The second appellant was her immediate supervisor. Prior to the commencement of any project which requires the appointment of temporary workers, he or someone designated by him must first approve such project. The “skoonmaak” project referred to in this case was not approved. The second appellant had no authority to employ workers without his approval. He did not disavow a statement put to him during cross-examination to the effect that the second appellant prepared contracts in respect of a project that was approved and that money was lawfully paid to workers in respect of that project.
- 5.23 W/o Phemelo Modisane, a member of the South African Police Service (SAPS), operated the video and recordings during the trap that was set for the first appellant.
- 5.24 W/o Lizelle Smith, a SAPS member, explained how the entrapment of the first appellant was arranged. The trap was

recorded and the “CD” was played before the trial court. She also took handwriting samples of the first appellant. All the contracts as well as the salary register were compiled and or handwritten by the first appellant. She seized a notebook belonging to the first appellant wherein the names and amounts paid to some of the witnesses were noted.

5.25 Mr Plaatjie Bassie testified that he was employed by the municipality at some stage. He decided to report this matter to the police because he saw Mr Mathee always carrying many envelopes to pay workers while there were not so many workers to be paid. He testified in detail how it came about that a trap was arranged for the first appellant and what had transpired during the trap. He never had any business with the second appellant. Mention was made of the second appellant during the trap operation when the first appellant informed him that she must give the money to the second appellant.

[6] Both the appellants testified in the trial court. The first appellant’s evidence can be summarised as follows:

6.1 Mr Mathee, a municipal official, arranged the appointment of temporary workers, including those that worked at the resort. In terms of the system that was in place until the end of May 2014 workers were paid in cash.

6.2 She admitted that there was an arrangement that the temporary workers had to report at the resort to receive their cheques at the end of June 2014. She did not know that they were “ghost workers”. Her understanding was that a spot check would be done at the resort in respect of the temporary workers and that an auditor from De Aar would assist in the verification process.

- 6.3 The reason for the appearance of her handwriting on some of the documents was as a result of the information provided to her by Mr Mathee. The payment system changed at the end of July 2014 and the salaries of temporary workers had to be paid into their bank accounts. Therefore, she informed Mr Mathee that the identity documents and banking details of the employees must be provided.
- 6.4 She accompanied the second appellant to the road near the Co-operation where they met Mr Mathee to deliver sausages which he had bought from the second appellant, but no money was exchanged.
- 6.5 She confirmed that the second appellant phoned her to enquire about a person who came to fetch a cheque at the municipal offices. She then informed the second appellant that the cheque is in the salary book.
- 6.6 She indicated that the second appellant requested her to collect R400.00 from Mr Mathee which he owed to the second appellant for the sausages he had purchased from her.
- 6.7 She denied that money was handed to her or the second appellant at the municipality while they were in the vehicle of the second appellant.
- [7] The second appellant's evidence can be summarised as follows:
- 7.1 She was a Human Resources Officer at the municipality during the incidents and she is still in the employ of the municipality. She was not involved in the finances or payments of workers.
- 7.2 The first appellant worked with her in the same office and was appointed as the salaries clerk. She was not the first appellant's supervisor. She had no knowledge of the

employment contracts that were accepted as exhibits and had not been involved in the drafting of these documents.

- 7.3 Ms Mary Williams had enquired about the vacancies at the municipality. She transported Ms Williams to the Breipaal offices and employed her from the beginning of August 2014. When she became aware that Ms Williams was involved in the incident leading to Mr Mathee's arrest, she terminated Ms Williams' services with the municipality.
- 7.4 She denied that she at any stage requested Ms Williams to collect money from the identified group of individuals and cannot remember Mr Bradley Gouws fetching a cheque at the municipality.
- 7.5 She denied that Ms Bettie Boom handed over the money to her on the road near the Co-operation. On that specific day, she called Mr Mathee in connection with the sausages that he had bought from her. Mr Mathee requested her to bring this to him on the road near the Co-operation. She, accompanied by the first appellant, complied. She quarrelled with Ms Bettie Boom about the price of the sausages, however, no money changed hands.
- 7.6 She admitted that she requested the first appellant to collect her R400.00 from Mr Mathee which he owed for the sausages. She has no knowledge of any payments made to the temporary workers and did not receive any monies from them.

Findings by the trial court:

- [8] The trial Court accepted the evidence presented by the State. It also accepted that Mr Mathee was an accomplice whose evidence had to be treated with caution. The court was mindful that there were several contradictions in the evidence presented by the State.

However, it went on to state that the evidence ought to be assessed holistically.

- [9] The trial court reasoned that Ms Mary Williams, Ms Bettie Boom and to some extent, Mr Plaatjie Bassie possibly played a greater role in the commission of the offences than they sought to portray.
- [10] The trial court found that the first appellant was implicated in the commission of the offences through the testimonies of Mr Mathee, Mr Plaatjie Bassie, the various entries in her notebook, the employment contracts of the “ghost” employees, the police trap, the video footage and her presence at the resort when cheques were paid out to “ghost workers”. In addition, the trial court found that various witnesses testified that they either handed out money or their IDs or banking details to the first appellant. For instance, Ms Mary Williams and Mr Harold Nelson. Furthermore, Ms Lizelle Adams testified that she gave the proceeds of the unlawful activities to Ms Williams whom she saw in the company of both the appellants in the second appellant’s vehicle. The trial court repeated what Ms Bettie Boom had testified on in respect of the collection of cash from the identified group of individuals at the resort following the cashing up of the cheques. The trial court went on to hold that the first appellant was a salary clerk at the municipality and the deficient control systems at her workplace resided within her knowledge.
- [11] The trial court held the view that the video material, made through the police action, and the first appellant’s notebook were an important piece of evidence. It was clear from the footage, so held the court, that the first appellant played an active role in obtaining the money from Mr Plaatjie Bassie. She knew where the money came from and insisted that she be given the full amount and not just R2000. The magistrate further described how in the footage her body language, attitude and tone of voice showed that she was constantly aware of what the transaction was about. It did not favour the first appellant, so reasoned the court, that she called Mr Mathee at the scene. How

she talked to Mr Mathee indicated that the duo colluded to commit the crimes. Her notebook entries also demonstrated how she had calculated her ill-gotten gains.

[12] The trial court was of the view that the second appellant was similarly implicated in the commission of the offences through the evidence of Mr Mathee regarding her direct actions; Ms Bettie Boom's testimony in respect of the handing over of the money at the road near the Co-operation; she also shared an office with the first appellant; she summarily terminated the services of Ms Mary William when the offences were uncovered; The first appellant also constantly referred to the second appellant in the video footage as the person who must receive the money.

[13] The court rejected any notion that Mr Mathee could have been the mastermind. If this was the case, so it reasoned, one would have expected Mr Mathee to keep the information as far as possible from the appellants. The court was of the view that the appellants were perfectly positioned to commit the offences due to their job profiles at the municipality which had, it would appear, quite inadequate internal control systems. The court found that the appellants were engaged in a gratuitous well-planned operation to siphon off the municipal funds. The planning could not have been solely done by Mr Mathee. The inescapable inference, so reasoned the court, was that the appellants were the brains behind the operation.

[14] The trial court rejected a belated argument that the Section 252A police action was inadmissible because it was never put in dispute during the trial nor was the court enjoined to adjudicate this aspect by means of a trial-within-a-trial.

Grounds of appeal:

[15] Before us, it was contended for the first appellant that the trial court erred in finding that the State proved its case beyond a reasonable doubt. The trial court, so it was argued, failed to take into account the contradictions and improbabilities in the evidence of various State witnesses, in particular that of Mr Mathee, Ms Mary Williams, Mr Plaatjie Bassie and Ms Bettie Boom. It was further argued that the court ought to have approached the evidence of Mr Mathee with caution because he was an accomplice. In addition, the trial court misdirected itself in accepting the evidence and the legality of the entrapment in terms of Section 252A of the Criminal Procedure Act 51 of 1977 (the CPA).

[16] The second appellant's grounds of appeal pivots on almost the same ground as those of the first appellant. It was argued for her that the trial court erred in finding her guilty on counts 3 to 26 when reasonable doubt existed on her involvement in the commission of the offences. In any event, so it was argued, that the court materially misdirected itself by rejecting her evidence while the evidence of the witnesses that link her to the commission of the offences was contradictory and lacking corroboration on material aspects.

The discussion:

The admissibility of the "trap" evidence:

[17] Mr Bode, for the first appellant, argued that the first appellant was not accorded her fair trial rights because of the admission of the evidence obtained following the entrapment. He submitted that the first paragraph in the Section 252A application for police action refers to the provisions of Section 252(a) which does not exist. He also submitted that the written authorisation of the application is dated 5 August 2014 whereas the operation was conducted on 4 August 2014. No evidence was presented in respect of the guidelines of the Director of Public Prosecutions regarding the supervision and control of traps

and whether these guidelines were adhered to, the argument continued.

[18] Section 252A(6) of the CPA reads as follows:

‘If at any stage of the proceedings the question is raised whether evidence should be excluded in terms of subsection (3) the burden of proof to show, on a balance of probabilities, that the evidence is admissible, shall rest on the prosecution: Provided that the accused shall furnish the grounds on which the admissibility of the evidence is challenged: Provided further that if the accused is not represented the court shall raise the question of the admissibility of the evidence.’

[19] In *Kotze v S*¹ the SCA had occasion to consider s 252A(6) and said:

‘The magistrate ruled at the end of a trial within a trial that the evidence of Terblanche was admissible. It is unfortunate that, in deciding to hold a trial within a trial, the magistrate did not require Kotzè to furnish the grounds on which he challenged the admissibility of the evidence, as should have been done in terms of the proviso to s 252A(6). That might have focussed attention on the pertinent matters in dispute and limited the lengthy examination and cross-examination over a number of days of Terblanche and Kotzè, as well as obviating the need for some other evidence to be led. Instead, a vast array of issues was traversed at considerable length and in great detail but at the end of the day most of these had little bearing on the central issue of admissibility. It is important for presiding officers faced with challenges to the admissibility of the evidence of a trap to be aware of and apply subsec (6), in terms of which the accused must ‘furnish the grounds on which the admissibility of the evidence is challenged’. The matter may then, in terms of subsec (7), be adjudicated as a separate issue in dispute, ie, during a trial within a trial.’ (My emphasis).

[20] The investigating officer(I/O), Ms Lizelle Smith, testified in detail about the trap. She also intimated that she had obtained the necessary

¹2010 (1) SACR 100 (SCA) para 19.

approval for the trap. At no stage during her evidence did counsel representing the first appellant contest the admissibility of her evidence. It appears to me that counsel took issue with this only during argument in the trial court.

- [21] It also goes without saying that the first appellant did not furnish any grounds upon which she sought to challenge the admissibility of the evidence as envisaged in section 252A(6) of the CPA. Neither was the trial court urged to adjudicate this aspect by means of a trial-within-a-trial. That the first paragraph of the section 252A application captures '252a' is of no moment as this was clearly a typing error. It follows that the trial court cannot be faulted in rejecting the argument that Section 252A proceedings were inadmissible. Consequently, the first appellant's ground of appeal on this point cannot succeed.

The cautionary rules in relation to an accomplice:

- [22] Mr Mathee, an accomplice, was already sentenced when he testified. The following remarks in *Rex v Gumede*² in respect of an accomplice that was sentenced before testifying in court, are apposite:

'When Jixani was called upon to testify against the applicant she had already been convicted and sentenced. She then had nothing to fear or hope for; we cannot speculate upon illusions which she might conceivably have cherished. The fact that the testifying accomplice has already been convicted and sentenced must necessarily lessen to a large extent the suspicion to which the evidence of accomplices is in general subject.

The discrepancies in Jixani's evidence upon which its credibility was attacked appear to be considerable until they are examined more closely.'

- [23] The trial court was alive to the fact that Mr Mathee was an accomplice whose evidence must be treated with the necessary caution. I hasten to state that any suggestion that Mr Mathee was the mastermind behind the scheme to defraud the municipality is without merit.

²1949 (3) SA 749 (A) at page 756.

Regard being had to his level of education, he could not have orchestrated the elaborate scheme without the assistance of the municipal officials engaged in the human resource of the municipality.

[24] As the trial court correctly found, corroboration remains an important safeguard when considering the reliability of the evidence of a single witness, more so, an accomplice. It bears emphasis that Mr Mathee did not attend school. His evidence concerning the meeting on the road near the Co-operation is corroborated by his wife. The fact that their respective versions differ as to who received the money, indicates the absence of conspiracy to implicate the appellants falsely. It is common cause that the meeting on the road near the Co-operation took place and that both appellants were present. The location of the meeting, away from the municipality, supports the versions of Mr Mathee and his wife.

[25] Ms Lizelle Adams also confirmed that both appellants and Ms Mary Williams were in the vehicle of the second appellant. Mr Mathee testified that the first appellant informed him that Mr Plaatjie Bassie must pay money to the first appellant. At a later stage, the first appellant contacted him in the presence of Mr Plaatjie Bassie and informed Mr Mathee that she received the R2 000.00 from Mr Plaatjie Bassie. This corresponds with the trial court's observations on the video footage.

[26] On the above analysis, it cannot be concluded that the cautionary rule in relation to single witnesses and other accomplices was not properly considered by the trial court. Accordingly, this ground of appeal must fail.

The contradictions and improbabilities in the evidence of the State witnesses:

[27] Mr Cloete, for the State, submitted that it is common cause that the municipality was defrauded through the payment of substantial

amounts of money to “ghost workers” during June and July 2014. He conceded that there are several contradictions in the evidence of the state witnesses. However, he argued, this did not entail that the State did not prove its case against the appellants.

[28] The principle is that in assessing evidence, the court ought to weigh up all the elements that point towards the guilt of an accused person against those elements that are indicative of his/her innocence taking proper account of inherent strengths and weaknesses, probabilities on both sides and having done so, to decide whether the balance is so heavily in the favour of the State that it excludes any reasonable doubt about the accused’s guilt.³ In *S v Van der Meyden*⁴ it was said:

‘A court does not base its conclusion, whether it be to convict or to acquit, on only part of the evidence. The conclusion which it arrives at must account for all the evidence. Although the dictum of Van der Spuy AJ was cited without comment in *S v Jaffer* 1988 (2) SA 84 (C), it is apparent from the reasoning in that case that the Court did not weigh the ‘defence case’ in isolation. It was only by accepting that the prosecution witness might have been mistaken (see especially at 89j—90B) that the Court was able to conclude that the accused’s evidence might be true.

I am not sure that elaboration upon a well-established test is necessarily helpful. On the contrary, it might at times contribute to confusion by diverting the focus of the test. The proper test is that an accused is bound to be convicted if the evidence establishes his guilt beyond reasonable doubt, and the logical corollary is that he must be acquitted if it is reasonably possible that he might be innocent. The process of reasoning which is appropriate to the application of that test in any particular case will depend on the nature of the evidence which the court has before it. What must be borne in mind, however, is that the conclusion which is reached (whether it be to convict or to acquit) 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.’

³*S v Chabalala* 2003 (1) SACR 134 (SCA).

⁴1999 (2) SA 79 (W) at 82A – 82D.

- [29] Almost all the witnesses who were the recipients of cheques and money were unsophisticated and financially vulnerable. Some of them testified that they were desperate for work and some were even desperate for food. One gains the impression that they attempted to dissociate themselves from what they must have known was criminal and wrong. This would account for numerous contradictions and improbabilities in their evidence.
- [30] A consideration of the evidence presented by the State as a whole which includes the video material obtained through the police trap; the entries in the first appellant's notebook; her presence at the resort when the cheques were handed out to recipients and the evidence of Harold Nelson points to the first appellant complicity. There can be no basis on which to conclude that the trial court erred in rejecting the first appellant's evidence. In my view, in weighing up all the elements, the balance weighs too heavily in favour of the State so as to exclude any reasonable doubt about the first appellant's guilt.

The trial court materially misdirected itself by rejecting the evidence of the second appellant:

- [31] Mr Nel, for the second appellant, argued that the only improbable aspect in the second appellant's version before the Court *a quo* is the employment and the termination of Mary Williams' services. According to Mr Nel, that on its own, is not enough to reject her evidence as not being reasonably possibly true.
- [32] As concerning the second appellant's version, the following is noteworthy. She admitted that both she and the first appellant were responsible for Human Resources work at the municipality. She was evasive in her answers and on numerous occasions she had to be

implored to answer the questions posed. Her version concerning Mr Mathee's reading ability was never put to Mr Mathee.

- [33] It was remarkable that when the prosecutor put to her that Mr Mathee would need to be knowledgeable that the municipality was in a financial position to pay the "ghost workers" for him to successfully set up the fraudulent scheme, she first responded negatively. However, after the question was repeated several times, she answered affirmatively. The following excerpt illustrates her mendacity:

'ANNESSE: Now take into account the position occupied by Moses Mathee and compare it with what Ms Morolo was appointed to, which one is in the better position to know the municipality would be able to pay? And now that you are adamant that she was a financial clerk.

TOLK: Ek weet nie.

ANNESSE: No mam. Put it differently. Which one is more exposed to the finances of the municipality between Mr Mathee and Ms Morolo?

TOLK: Yes, beide van hulle want Mev Morolo werk nie met die begroting nie.'

- [34] The second appellant's evidence with regard to her clandestine employment and termination of Ms Mary Williams' services is interspersed with contradiction and untruthful. She also tried to distance herself from the evidence in respect of Ms Lizelle Adams to the effect that the prospective employees' ID copies were taken to the HR office during June, where she had been employed. Her response was: 'Ek weet nie.'

- [35] On the foregoing analysis, it cannot be said that the only improbable aspect in the second appellant's version was with regard to the employment of Mary Williams. The positions of the appellants are interlinked. The evidence does not justify a finding that the first appellant is guilty and not the second appellant because they are placed together at highly incriminating moments such as in the car of

the second appellant and at the meeting on the road near the Co-operation.

[36] If the evidence of Mathee is accepted as to the complicity of the first appellant, there is no reason not to accept his evidence as far as the second appellant is concerned. The observations of the trial court in respect of the video footage, which did not form part of the appeal record, were not disputed or criticized by the appellants' legal representatives. It bears repeating that the trial court made an observation that the first appellant constantly referred to the second appellant in the video footage as the person who must receive the money.

[37] In the premise, the second appellant's version cannot be accepted as reasonably possibly true.

CONCLUSION

[38] The upshot of the above exposition is that the trial court did not materially misdirect itself in its factual and credibility findings. In addition, the trial court's conclusion that the State proved its case beyond reasonable doubt against the appellants cannot be faulted. It follows that the appeal must fail. I make the following order.

Order:

1. The appeal against the convictions of the first and second appellants is dismissed.

**AS SIEBERHAGEN
ACTING JUDGE**

Phatshoane DJP concur in the judgment of Sieberhagen AJ.

For the First Appellant: Mr. R Bode (oio Engelsmand Magabane Inc.)

For the Second Appellant: Adv. I.J. Nel (oio Towell & Groenewald Attorneys)

For the Respondent: Adv. JJ Cloete (oio NDPP)