THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

Not reportable

CASE NO: 650/06

In the matter between :

ROYCHAND RAMDEO Appellant

and

DIRECTOR OF PUBLIC PROSECUTIONS Respondent

Before:	**NUGENT, JAFTA JJA & SNYDERS AJA**
Heard:	**21 MAY 2007**
Delivered:	**29 MAY 2007**
Summary:	**Sentence – fraud – issuing false roadworthy certificates.**
Neutral citation:	**This judgment may be referred to as *Ramdeo v Director of Public Prosecutions* [2007] SCA 65 (RSA)**

J U D G M E N T

NUGENT JA

NUGENT JA:

[1] The appellant and Mr Derrick Xulu were charged together and convicted upon pleas of guilty on four counts of fraud in the magistrate's court for the district of Pietermartizburg. The magistrate took the offences together for purposes of sentence and sentenced each to 5 years' imprisonment that was conditionally suspended for 5 years. One of the conditions of suspension in each case was that the sum of R5 000 be paid to the South African Revenue Service. The Director of Public Prosecutions appealed to the High Court at Pietermaritzburg against the sentence that was imposed upon the appellant. On appeal the high court (Alkema AJ and Combrink J) increased the sentence to 5 years' imprisonment. The appellant now appeals against that order.

[2] The National Road Traffic Act 93 of 1996 prohibits a motor vehicle from being operated on a public road unless it has met the requirements for the issue of a roadworthy certificate. Roadworthy certificates may be issued by testing stations that have been registered in terms of the Act. The appellant was employed by such a testing station as a motor vehicle examiner. On four occasions (on 5 November 2001, on 6 November 2001, on 17 April 2002, and on 23 April 2002) the appellant held out that he had inspected a vehicle (the same two vehicles, each on two occasions) and that he had completed a roadworthiness test sheet as a result of that inspection. On the strength of the information contained in the roadworthiness test sheet on each occasion a roadworthy certificate was issued. In truth the appellant had not inspected the relevant vehicle at all and the roadworthiness test sheet that he completed was false. On each occasion Xulu facilitated the transaction, for which Xulu received a fee from the person for whom the roadworthy certificate was issued.

[3] It is well established that sentence is a matter for the discretion of the sentencing court, and that a court of appeal may not interfere with the exercise of that discretion unless it is satisfied that the discretion was not properly exercised. In appropriate circumstances the sentence itself might justify the inference that the sentencing court did not properly exercise its discretion, either by giving undue weight to some factors at the expense of others, or by not according sufficient weight to some of them.

[4] In the present case the facts that I have outlined above were supplemented by other evidence led by the state. The evidence of a senior traffic officer and examiner of vehicles was that at the time the offences occurred the issue of fraudulent roadworthy certificates was common, particularly in the public transport industry in the Natal midlands. A research project had concluded that a substantial number of vehicles that were involved in accidents were unroadworthy. One of the problems that was identified was that certificates of roadworthiness were being fraudulently issued, without examination of the vehicles concerned, and steps had been taken to apprehend offenders.

[5] At the time of his conviction the appellant was 45 years old, married with three children, employed as a cashier earning R2 000 per month, and was a first offender. His co-accused, Xulu, was in substantially the same position.

[6] To facilitate the operation of unroadworthy vehicles on public roads, as the appellant did, clearly creates the potential for serious consequences to members of the public, and I agree with the court below that the sentence that was imposed by the magistrate was altogether inappropriate. But it was

submitted on behalf of the appellant that the court below erred itself in imposing a sentence that was excessively harsh.

[7] It was submitted on behalf of the appellant that it would be offensive to ordinary notions of justice if the sentences received by the appellant and Xulu were materially disparate, bearing in mind that they were both convicted of the same offences. Although they were both convicted of the same offences it does not follow that the role that each played was equally culpable. It was the responsibility of the appellant to ensure that vehicles were roadworthy before a certificate of roadworthiness was issued. That placed him in a position of trust that called upon him to resist being importuned by people like Xulu. In my view the breach by the appellant of his responsibilities made him considerably more culpable than Xulu and I see every reason to differentiate between them when it comes to sentence. Moreover, if the sentence that was imposed upon Xulu was inappropriately light, I do not think the state can be faulted for having appealed only against the sentence that was imposed upon the appellant, bearing in mind the greater culpability of his actions. If that means that Xulu escapes with an inappropriately light sentence I do not think that is to be remedied by similarly imposing an inappropriate sentence on the appellant.

[8] Although the material that was placed before the magistrate in that regard was scanty I accept that the appellant was an employee and that his employer is likely to have been party to his conduct. It was submitted in the circumstances that it was his employer who was the primary villain. Perhaps that is so but there is no evidence to suggest that the appellant was not a willing participant in his employer’s conduct, as his counsel suggested. On the contrary, the fact that the offences were committed some 5 months apart indicates, in the absence of

any evidence to the contrary, that the appellant was well aware of what he was doing, and was a willing participant in the fraud.

[9] The offences that were committed by the appellant were undoubtedly serious, as the court below found, and demanded a custodial sentence. But in my view the appropriate sentence was one of imprisonment for 3 years, which is sufficiently disparate from the sentence that was imposed as to warrant the inference that the court below accorded excessive weight to the seriousness of the offence at the expense of the circumstances of the appellant.

[10] Accordingly the appeal is upheld. The order of the court below is set aside and the following is substituted:

> 'The appeal is upheld. The sentence imposed by the magistrate is set aside and substituted with a sentence of 3 (three) years' imprisonment.'

RW NUGENT
JUDGE OF APPEAL

CONCUR:
JAFTA JA)
SNYDERS AJA)