THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Case no: 446/10

In the matter between:

IZAK JACOBUS NEL ENGELBRECHT **Appellant**

and

THE STATE **Respondent**

Neutral citation: ***Engelbrecht v The State*** **(446/10) [2011] ZASCA 068 (17 May 2011)**

Coram: Mpati P, Bosielo JA and Plasket AJA

Heard: **07 March 2011**

Delivered: **17 May 2011**

Summary: Criminal law – Appeal against conviction on 157 counts of fraud and the sentence imposed on all the counts of fraud and one of corruption – Conviction – accomplices' evidence found to be satisfactory – Sentence – Disparity in the sentences imposed on different accused convicted of the same offences by two different courts – sentencing discretionary – no misdirection.

ORDER

On appeal from: Western Cape High Court (Cape Town) (Le Roux AJ and Oosthuizen AJ sitting as a court of appeal):

1. The appeal against conviction on the 157 counts of fraud is dismissed.
2. The sentences imposed on the appellant in respect of the counts of fraud and one of corruption are confirmed, but it is ordered that the sentence imposed in respect of 157 counts of fraud run concurrently with the sentence imposed in respect of the corruption charges.

JUDGMENT

BOSIELO JA (Mpati P and Plasket AJA concurring)

[1] The appellant was convicted of 157 counts of fraud and one of corruption in the Regional Court, Bellville. He was sentenced to six (6) years' imprisonment with two (2) years suspended for five (5) years on certain conditions in respect of the fraud counts, which were taken together as one for purposes of sentence, and three (3) years' imprisonment in respect of the count of corruption. His appeal to the Western Cape High Court, Cape Town failed and leave to appeal to this court was refused. This appeal, which is against his convictions in respect of the fraud charges and the sentences imposed on him, is with leave of this court.

[2] Although the facts of this case are convoluted, I shall extract from them what I consider to be essential and largely common cause. This matter involves fraud against the South African Revenue Service (SARS). The three key protagonists are the appellant, Mr Ian Wiid (Wiid) and Mr Frederick Carstens Geldenhuys (Geldenhuys). The appellant worked as the sales manager of Reeds Motors, a motor dealer in Observatory, Cape Town. He was responsible for the purchase and sale of motor vehicles. Wiid was the sole owner of two motor dealerships, known as Quattro Trade and Wholesalers (Quattro) and Auto Haven Motors CC (Auto Haven), whilst Geldenhuys was the manager of both Quattro and Auto Haven.

[3] Although there is some conflict between the appellant's version and that of Wiid and Geldenhuys regarding how they started to do business together, it is not in dispute that between October 1997 and December 1998 the appellant, purporting to act on behalf of Reeds Delta, supplied vehicles to Quattro. The appellant explained that as he was eager to expand Reeds Delta's business of exporting vehicles to Namibia, he telephoned a dealer in Namibia, Mr Lewellyn Anthony (Anthony) and offered him a vehicle for sale. As Anthony did not know the appellant he was reluctant to do business with him. Instead, he recommended that he take the vehicle to Wiid who would inspect it on his (Anthony's) behalf and advise him about its condition. Since Anthony was satisfied with the condition of the vehicle as advised by Wiid, he agreed to purchase it through Wiid who was better known to him. It appears that Wiid felt that the appellant was interfering with his market in Namibia and expressed his displeasure to the appellant. Although the evidence is not clear as to when this occurred, it is not in dispute that

an arrangement was then put in place in terms of which Reeds Delta would use Quattro for all its vehicle exports to Namibia. It was agreed that Reeds Delta would be responsible for completion of all invoices and the necessary documentation whilst Quattro would act as sales agent for Reeds Delta.

[4] Purporting to act in terms of the agreement the appellant prepared offers to purchase and invoices which he sent with the vehicles to Quattro. In addition, the appellant also furnished Quattro with Common Customs Area forms (CCA1) duly completed and reflecting the names of the purchasers in Namibia. The invoices were all written for 'export to Namibia only' and reflected the particulars of the purchasers in Namibia. According to the appellant Quattro was supposed to export these vehicles to the consignees mentioned in the invoices and offers to purchase.

[5] It is common cause that by exporting the vehicles to Namibia, Reeds Delta would be able to have them zero-rated for purposes of Value Added Tax (VAT). In other words Reeds Delta would not be obliged to pay any output VAT on such vehicles to the Receiver of Revenue (SARS) whereas, if it sold them locally, there would have been a legal obligation to pay output VAT. The appellant testified that he was under the impression that the vehicles which he delivered to Quattro were exported as per the invoices and the CCA1 forms to the consignees in Namibia. However, the appellant conceded that he did not, on his own, verify if the vehicles were exported to the purchasers in Namibia as he believed that Quattro would export them. According to the appellant, he only discovered much later that not all the vehicles which he had delivered to Quattro were exported, but, on his own admission, did nothing to correct the situation.

[6] The appellant's version conflicts directly with that of the respondent as deposed to by Wiid, Geldenhuys and Ms Jeanette Riley (Riley). The combined version of both Wiid and Geldenhuys is that it is the appellant who came up with the scheme to sell vehicles to Quattro which would be disguised as exports so that Quattro would not have to pay output VAT on them. In order to facilitate the scheme, the appellant would prepare all the necessary documentation which included an offer to purchase and an invoice accompanied by a CCA1 form. The CCA1 form is essential proof that a particular vehicle whose details are reflected on it has in fact been taken across the border as an export to the consignee in Namibia. It is then submitted to SARS as proof that output VAT is not payable on the transaction.

[7] The CCA1 form must contain all the correct details of the vehicle to be exported, and the particulars of the person to whom it is to be delivered to. It must be signed at the border post by the relevant customs official. It is common cause that the CCA1 forms relevant to the various counts were initially completed by the appellant and later by Geldenhuys until Wiid stopped him.

[8] It is common cause that at some stage during February 1998 the appellant and his brother, together with Wiid and Geldenhuys, went on a fishing expedition to Namibia. Whilst at Swakopmund they visited Anthony. It was during this trip that a bundle of blank CCA1 forms were produced and stamped with a fake Namibian border post stamp made available by Anthony. Although the appellant denied having participated in the stamping of the blank CCA1 forms, Wiid and Geldenhuys insisted that he stamped them with Geldenhuys and that they returned

to South Africa with them. These forms were subsequently used to facilitate the scheme.

[9] Riley was the administrative clerk at Quattro. She worked closely with Geldenhuys. Her job entailed receiving vehicles into stock, preparing sales invoices, maintaining the floor plan and attending to the cash book and the writing of cheques. She testified that she was aware of the scheme that involved the purchase and sale of vehicles between Reeds Delta and Quattro. According to her, Auto Haven purchased vehicles from Reeds Delta. Auto Haven would in turn book the vehicles out to Quattro. The appellant would bring the invoices to her so that she could receive the vehicles into their stock. Upon receiving the vehicles she added a certain amount to the original price. According to Riley the invoices in respect of these vehicles were addressed to Sirkel Motors in Namibia. Notwithstanding this, Auto Haven received them into their stock. The invoices would show the commission which was payable to the appellant. Once the vehicle had been received, Geldenhuys would issue his personal cheque to pay Reeds Delta. He would, in turn, issue a cheque for the equivalent amount from Quattro's account to repay himself. As Riley was also responsible for preparing cheques for the commission payable to the appellant, she would prepare a cheque and give it to Mr Sam Linders, the messenger, to cash at the bank. Once the cheque was cashed, she would hand the money over to Geldenhuys who would give it to the appellant. She testified that the appellant, from time to time telephoned her to check if the money was available and he would then fetch it. Importantly, Riley testified that the appellant knew that the vehicles which he had brought to Quattro and which were purportedly exported to Namibia were not exported as he saw them on the

shop floor at Quattro where he used to visit regularly. Riley also testified about an amount of R30 000 which she once had to send to the appellant in an envelope when the latter was with Wiid at the Cape Town airport. This money represented commission in respect of a number of vehicles which the appellant had delivered to Quattro.

[10] Mr P J Cronje (Cronje) was an investigator contracted by SARS. To a large extent his evidence was not disputed. He was personally involved in the investigation of this matter. In the course of his investigation he discovered that the CCA1 forms in respect of the vehicles which form the subject of the various charges herein had on them a stamp purporting to be from the Noordoewer border post. However, he was unable to trace the actual stamp. He concluded that the stamp used on the forms was not an official one. He also discovered that Geldenhuys had in each case completed documents indicating that Quattro had taken the relevant vehicles into stock, whereas in the books of Reeds Delta the invoices were made out to some particular Namibian purchasers. Furthermore, in Quattro's books the amount reflected in the relevant invoice in each case was more than the zero-rated amount actually invoiced and paid to Reeds Delta. On the other hand, Geldenhuys calculated the deemed VAT on the increased amount reflected on the invoices which he then entered into Quattro's documents, thus reflecting the vehicle as part of Quattro's stock.

[11] A prominent feature in the documents which Cronje handed in consisted of some offers to purchase and corresponding invoices from Reeds Delta in respect of each vehicle. These documents reflected either Sirkel Motors or Auto Angling in

Windhoek, Namibia, as the purchaser. The offers to purchase in each case were signed by the appellant on behalf of the supposed purchasers in Namibia. On both the purchase order and invoice from Reeds Delta, VAT was shown as zero in each case. According to Cronje each CCA1 document contained a Customs and Excise stamp which was subsequently established to be false. In turn Mr Roy Marcus (Marcus) Reeds Delta's Financial Director at the time, relied on the invoices generated at Reeds Delta and the CCA1 forms to prepare Reeds Delta's tax returns, the so-called VAT 201 forms. Marcus testified that because the information reflected on the CCA1 forms corresponded with the one in the schedule of sales in their computer, he believed that the vehicles were indeed exported to Namibia. Relying on this information he ensured that Reeds Delta did not pay output VAT on these transactions.

[12] In further pursuit of his investigations, Cronje went to Namibia where he interviewed all the dealers who were reflected as purchasers on the Reeds Delta invoices and CCA1 forms. All of them indicated that they had never purchased, or received, the vehicles in question. He established further that these vehicles were instead delivered to Quattro and Auto Haven in South Africa. Cronje discovered that no output VAT was paid on these transactions when the vehicles were sold to Quattro and Auto Haven by Reeds Delta. This resulted in Quattro and Auto Haven unlawfully increasing their profits. Cronje also discovered that the appellant constantly received commission in respect of each of the vehicles he delivered to Quattro. A history of these vehicles showed the previous owner to be Quattro and not Reeds Delta. It is worth noting that although the appellant denied receiving

cash cheques from Geldenhuys or Quattro, he admitted that he received a small commission for his involvement in these various transactions.

[13] As against the state's version, the appellant denied any participation in any fraudulent scheme involving the sale of vehicles. He admitted that he delivered the vehicles in issue to Quattro. He maintained that the vehicles which Reeds Delta delivered to Quattro were intended to be exported to the Namibian dealers mentioned in the documents. He confirmed that he completed the offers to purchase in the name of the dealers in Namibia to whom the vehicles had to be delivered. He knew that the tax invoices for these vehicles would show that they were destined for export to some specific purchasers in Namibia. This would all be used as a legal basis for the transactions to be zero-rated for VAT purposes. He only discovered much later that the vehicles were never exported. The appellant denied ever having stamped any CCA1 forms whilst on a fishing trip with Wiid and Geldenhuys in Namibia. He also denied that he received any commission by way of cheque payments. He maintained that the deals which were made between Reeds Delta and Quattro were legitimate. According to the appellant, this arrangement was agreed upon at a meeting where his manager, Mr John Danks (Danks) was present thus implying that Danks approved it. He testified that he met Wiid at a time when he wanted to expand his market into Namibia. As Wiid complained that he was stealing his market after he had contacted Anthony in an attempt to sell a vehicle to him, they agreed that he would use Quattro as Reeds Delta's agent. For all intents and purposes he believed that the vehicles which he had delivered to Quattro were subsequently exported to Namibia in accordance with the invoices and CCA1 forms which he had prepared. He denied having

received any commissions as testified to by Geldenhuys and Riley and testified that he only received meagre payments for facilitating the sales. He pertinently denied that he received R30 000 as commission for the sale of vehicles to Quattro. He conceded that he knew that it was against Reeds Delta's policy for him to receive any secret commission for any work done by him on behalf of Reeds Delta.

[14] It is common cause that both Wiid and Geldenhuys testified as accomplices. They had already been convicted of charges relating to the same scheme following a plea-bargaining agreement with the state in terms of s 105A of the Criminal Procedure Act 51 of 1977 (CPA). Riley was duly warned by the Regional Court Magistrate in terms of s 204 of the CPA because of her role in the scheme.

[15] Counsel for the appellant was critical of the magistrate's acceptance of their evidence. He submitted that Wiid and Geldenhuys were neither honest nor truthful witnesses as they tried to minimise their respective roles in this saga. Regarding Riley it was argued that she had been intimately involved in this elaborate fraud scheme and that she failed to testify truthfully and honestly. The main contention is that their versions should have been rejected as unreliable.

[16] Stripped of any unnecessary frills it appears to me that the only real issue is whether and to what extent the appellant had knowledge of, and was involved in, this fraudulent scheme. That this was a scheme intended to defraud SARS of money in respect of VAT admits of no doubt. It is clear from the evidence as a whole that, although the vehicles in issue were supposed to be exported to Namibia and thus qualified to be zero-rated, they were never exported to the purchasers

identified in the relevant documents in Namibia. Instead, they were delivered to Auto Haven or Quattro where they were taken into their stock. Contrary to the invoices and offers to purchase, the vehicles were then sold locally. It is also common cause that false CCA1 forms were used to facilitate this fraudulent scheme. This is confirmed by Mr Vuzo Ngcobo (Ngcobo) who was the Branch Manager at Vioolsdrift border post. Mr Edwin van Rooy (Van Rooy), who was a Senior Customs Officer in Namibia, testified that for a proper import of vehicles into Namibia from South Africa, a CCA1 form had to be submitted together with a NA500 form from Namibia which has been in use since 1 June 1995. He stated further that the stamp of Noordoewer 061 which was used on the CCA1 forms was false and did not emanate from their offices. This is so as the Namibian authorities did not use Noordoewer 061 but Noordoewer 06I, the 'I' standing for 'import.' Importantly Van Rooy confirmed that the vehicles involved herein could not be found either in the computers at Noordoewer border post or their main computer at their head office. This is crucial as all vehicles imported from South Africa or anywhere outside Namibia have to be registered on their computer for purposes of registration.

[17] It was argued on behalf of the appellant that the evidence of Wiid and Geldenhuys should have been rejected as unreliable. The main argument is that their versions were littered with serious contradictions and further that they did not testify truthfully and honestly, in particular about their involvement in the scheme. It is clear that the trial court was aware of the contradictions in the versions of both Wiid and Geldenhuys. Having observed the two witnesses whilst testifying, the trial court acknowledged that it could not be said that they were perfect witnesses.

However, the trial court, despite some imperfections in their evidence and having applied the necessary caution, found that their evidence was the truth, more so that it was amply corroborated by other evidence, including circumstantial evidence. It is not required of accomplices that they be perfect witnesses. In *S v Francis* 1991(1) SACR 198 (A) at 205f-g, this court set out the position thus:

'It is not necessarily expected of an accomplice, before his evidence can be accepted, that he should be wholly consistent and wholly reliable, or even wholly truthful, in all that he says. The ultimate test is whether, after due consideration of the accomplice's evidence with the caution which the law enjoins, the Court is satisfied beyond all reasonable doubt that in its essential features the story that he tells is a true one.'

[18] Having read the transcript I am unable to find any fault with the assessment of these witnesses by the trial court, which had the advantage of seeing them testify and observing their reactions to questions during cross-examination. This gave the trial court an advantage which this court does not have as a court of appeal. In the absence of any misdirection by the trial court, I decline to interfere with such a finding. See *R v Dhlumayo & another* 1948 (2) SA 677 (A); *S v Francis*, above at 204c-e

[19] Central to the resolution of this appeal is the interpretation of s 11(1)(a) of the Value-Added Tax Act 89 of 1991 (the VAT Act) which provides:

'Zero rating

(1) Where, but for this section, a supply of goods would be charged with tax at the rate referred to in section 7 (1), such supply of goods shall, subject to compliance with subsection (3) of this section, be charged with tax at the rate of zero per cent where –

(a) the supplier has supplied the goods (being movable goods) in terms of a sale or instalment credit agreement and –

(i) the supplier has exported the goods in the circumstances contemplated in paragraph (a), (b) or (c) of the definition of 'exported' in section (1); or

(ii) the goods have been exported by the recipient and the supplier has elected to supply the goods at the zero rate as contemplated in Part 2 of an export incentive scheme referred to in paragraph (d) of the definition of 'exported' in section 1: Provided that –

(aa) where a supplier has supplied the goods to the recipient in the Republic otherwise than in terms of this subparagraph, such supply shall not be charged with tax at the rate of zero per cent; and

(bb) where the goods have been removed from the Republic by the recipient in accordance with the provisions of an export incentive scheme referred to in paragraph (d) of the definition of 'exported' in section 1, such tax shall be refunded to the recipient in accordance with the provisions of section 44 (9).'

[20] Section 7(1)(a) provides that 'there shall be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the value-added tax – (a) on the supply by any vendor of goods or services supplied by him on or after the commencement date in the course or furtherance of any enterprise carried on by him'. Equally relevant is s 28(1), which prescribes that any vendor shall, within the period ending on the twenty-fifth of the first month commencing after the end of a tax period relating to such vendor, furnish the Commissioner with a return and calculate the amount of such tax accordingly and pay the tax payable to the Commissioner. Section 16(3)(a)(i) prescribes how the amount of the tax payable should be calculated by deducting the 'output tax' from the 'input tax'.

[21] It is common cause that Reeds Delta, as a registered vendor, had the legal obligation to comply with the provisions of the VAT Act. As a registered vendor it was obliged to pay 'output tax' in respect of all vehicles it sold in South Africa. It

was only when it sold its vehicles outside the country ie exported them, that it was exempted from paying 'output tax' in terms of s 11(1)(a) of the VAT Act. In other words it would be entitled to charge tax on the vehicles at the rate of zero per cent.

[22] It is clear from a reading of the VAT Act that it is essentially a system of self-assessment, in that the responsibility to calculate, deduct and pay over the correct value-added tax lies solely with the vendor. Invariably, SARS is bound to rely on the honesty and integrity of vendors to calculate and pay the correct amount for VAT. It will not be feasible or cost-effective for SARS on its own to try and verify each and every transaction by each and every vendor. It is therefore of critical importance that all relevant documentation be properly completed.

[23] Counsel for the appellant submitted that no fraud has been proved in this case. The thrust of his submission was that, even accepting that the vehicles concerned were not delivered to the purchasers shown in the invoices and CCA1 forms, which were prepared by the appellant, there was evidence that some of the vehicles were ultimately sold and delivered to certain purchasers in Namibia. Based on this, he contended that the appellant was entitled to sell those vehicles at zero-rated VAT. He submitted that what was essential for compliance with s 11(1)(a) was that the vehicles were ultimately exported to Namibia. He contended that it was irrelevant as to when or to whom they were exported. He argued further that by having the vehicles eventually exported to Namibia, albeit to different purchasers and at dates different to those reflected on the invoices and CCA1

forms, the appellant did not cause SARS to suffer any prejudice, be it actual or potential and hence no fraud was proved.

[24] On the other hand, counsel for the respondent submitted that s 11(1)(a) requires strict compliance. This is so because the CCA1 forms and the tax invoices are intended to serve as essential proof that the goods reflected on them have in fact left South Africa for export to another country, this being the basis for a legitimate reason for the zero-rated VAT. Counsel submitted that for the appellant to have complied with the section, he had to ensure that the vehicles which were recorded in the offers to purchase, invoices and CCA1 forms were indeed taken over the South African border and sold and delivered to the purchasers in Namibia as reflected on the forms. She contended further that the fact that some of the vehicles which were delivered to Quattro by the appellant were subsequently exported to Namibia by Quattro and delivered to purchasers different to those reflected in the forms was not sufficient to purge these transactions of their illegality. Counsel's contention was that the evidence demonstrated clearly that the scheme between the appellant, Wiid and Geldenhuys was that the appellant sold the vehicles to Wiid at zero-rated VAT on the pretext that the vehicles were destined for export to specific customers in Namibia. She submitted that all three of them knew that the vehicles were not to be exported but would be sold by Quattro locally. This is further bolstered by the admitted fact that it is Geldenhuys and not Namibian purchasers who paid Reeds Delta for the vehicles sold. She submitted that the fact that Reeds Delta unlawfully avoided paying 'output VAT' in respect of vehicles which were never exported constituted actual prejudice to SARS.

[25] The appellant's main submission raises the rather philosophical question of when is fraud a real fraud. Does the mere fact that some of the vehicles sold by Reeds Delta to Quattro were ultimately sold by Quattro to different purchasers in Namibia purge these transactions of their illegality? I think not. The appellant did not dispute the fact that, whilst employed by Reeds Delta, he sent vehicles from Reeds Delta to Quattro which were accompanied by offers to purchase, tax invoices and CCA1 forms, all of which reflected that the vehicles were destined for export to identified purchasers in Namibia. However, contrary to what was contained in these documents, the state has proved beyond a reasonable doubt, in my view, that the vehicles in issue were in fact never exported to the named purchasers in Namibia. Instead, they were delivered to Quattro which in turn took them into its stock and sold most of them locally. There is also uncontradicted evidence that the CCA1 forms used in these transactions were false. The appellant admitted to facilitating these sales, for which Quattro would pay him a small commission. I accordingly find the submission by appellant's counsel to be without merit.

[26] The word 'export' in terms of the general scheme of the VAT Act has a special meaning. In terms of the VAT Act 'exported', in relation to any movable goods supplied by any vendor under a sale or an instalment credit agreement means amongst others–

'(a) consigned or delivered by the vendor to the recipient at an address in an export country as evidenced by documentary proof acceptable to the Commissioner….'

It is clear from the evidence that the vehicles which appeared on the invoices and CCA1 forms from Reeds Delta were never delivered to the recipients at the

addresses in Namibia reflected on the invoices and CCA1 forms and were not intended to be delivered to them. Undoubtedly, the appellant acted in contravention of the VAT Act.

[27] In his book, the *South African Criminal Law and Procedure* 3ed (1996) Vol. II at p702, JRL Milton defines fraud as the unlawful making, with intent to defraud of a misrepresentation which causes actual prejudice or which is potentially prejudicial to another. The essential elements of fraud are therefore (a) unlawfully; (b) making a misrepresentation; (c) causing; (d) prejudice or potential prejudice; (e) intent to defraud (at p707). It is clear from the evidence that by pretending that the vehicles concerned were destined for export to certain specified purchasers in Namibia when in truth they were sold locally the appellant misrepresented the facts. The fact that the appellant knowingly falsified the offers to purchase and the tax invoices and used false CCA1 forms is clear proof that the appellant acted unlawfully and with clear intent to defraud. It is common cause that the appellant is an experienced seller of vehicles. Importantly, he conceded that he knew what the correct procedures and legal requirements for exports of vehicles were as, on his own admission, he had been exporting vehicles to Namibia prior to his involvement with Wiid and Geldenhuys. Evidently, the appellant's conduct resulted in SARS losing approximately R1,6 million in respect of the output VAT which Reeds Delta should have paid in respect of the vehicles as they were not exported but sold locally. To my mind, the appellant's conduct meets the definition of fraud. The fact that the appellant consistently received payments from Quattro, no matter how big or small, for these fraudulent transactions, constitutes proof that he was a

willing participant in this elaborate fraudulent scheme. It follows that his convictions for fraud on all the 157 counts were correct and must stand.

[28] I now proceed to deal with the appeal against the sentences imposed. The main submission advanced on the appellant's behalf was that the sentences imposed on him are startlingly disparate to the sentences imposed on Wiid and Geldenhuys, his former co-accused who were both convicted on all the counts of fraud following their plea-bargains with the respondent. It was submitted that a comparison of the respective sentences induces a sense of shock. Great emphasis was placed on the principle of parity ie that people who commit the same offence(s) must, absent compelling reasons, be sentenced alike. It was submitted that the fact that both Wiid and Geldenhuys pleaded guilty to all the charges in terms of s 105A of the CPA cannot justify such disturbing disparities in their sentences. I do not agree.

[29] There are two important factors which distinguish the two scenarios. First, the appellant's two former co-accused entered into a plea-bargaining agreement with the state in terms of s 105A of CPA and were sentenced in accordance therewith. Secondly, and quite importantly because of the fact that the appellant pleaded not guilty with the result that evidence was led against him, the trial court had sufficient evidence about how the frauds were carefully planned and executed, including the crucial role played by the appellant. To my mind, the trial court was justified in taking such evidence into account in deciding on an appropriate sentence for the appellant. This is so as each court had a discretion to decide on an appropriate sentence based on the facts adduced before each court. It is trite that sentencing is pre-eminently a matter falling within the discretion of the sentencing

court. Accordingly, I fail to see how, assuming the sentences imposed on the appellant's erstwhile co-accused were unduly lenient, the appellant could be entitled to benefit from any such alleged undue leniency committed by the court which sentenced them. Such an approach to sentencing would lead to a travesty of the principles underlying sentencing.

[30] I am not persuaded that the sentences imposed on the appellant, given the scale and circumstances under which these offences were committed, are shockingly inappropriate. It is clear from the evidence that this elaborate fraudulent scheme was well thought out and planned. The scheme was executed from October 1997 to December 1998. In the process 157 vehicles were fraudulently sold without any 'output VAT' being paid. This resulted in SARS being defrauded of approximately R1,6 million. The evidence proves clearly that the appellant played a pivotal role in this scheme. He prepared the false offers to purchase, which were used to generate false tax invoices as well as the CCA1 forms. All these documents were indispensable to the success of the fraud. And for every fraudulent transaction, the appellant benefited unlawfully by receiving a commission from Quattro. This is notwithstanding the fact that in terms of his contract with his employer, Reeds Delta, he was not supposed to receive any remuneration or commission privately. It is clear that the appellant was motivated by nothing other than greed and self-aggrandisement. He unashamedly abused the position of trust in which he stood vis-à-vis his employer.

[31] I agree that there is a need to impose appropriate sentences with a deterrent effect, particularly in matters involving fraud which is so endemic in our society.

However, I am of the view that the court below did not give proper consideration to the cumulative effect of the sentences imposed on the appellant. What is clear is that the various counts of fraud and the one of corruption all emanate from the same transactions. I regard it as fair that the sentences be ordered to run concurrently to ameliorate the severity thereof.

[32] In the result I make the following order–

1. The appeal against conviction on the 157 counts of fraud is dismissed.
2. The sentences imposed on the appellant in respect of the counts of fraud and one of corruption are confirmed, but it is ordered that the sentence imposed in respect of 157 counts of fraud run concurrently with the sentence imposed in respect of the corruption charges.

L O Bosielo
Judge of Appeal

APPEARANCES:

APPELLANT:	D A J Uijs SC Instructed by: Craig Schneider & Associates, Stellenbosch; McIntyre & Van der Post, Bloemfontein
RESPONDENT:	B Hendry Instructed by: Director Public Prosecutions, Cape Town; Director Public Prosecutions, Bloemfontein