



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

REPORTABLE

Case No: A5024/2015

In the matter between:

MARK RUSSEL ATTIEH

Appellant

and

**THE COMMISSIONER FOR THE SOUTH AFRICAN
REVENUE SERVICE**

Respondent

Case Summary: Revenue – Capital gains tax – sale of shares – Income Tax Act 58 of 1962 - para 35(1) of the Eighth Schedule – meaning of ‘received’ by and ‘accrued’ to - whether full amount of purchase consideration was received by or accrued to taxpayer - para 35(c) of the Eighth Schedule – interpretation – whether general words ‘any other event’ are *eiusdem generis* with immediately preceding words – whether ‘event’ on which taxpayer relied in making deduction from proceeds of sale of shares within the ambit of deductions contemplated in subparagraph – Tax Administration Act 28 of 2011 - sections 222 and 223 – understatement penalty – whether appropriate understatement penalty percentage applied – s 270(6D) – whether penalty should be reduced - Income Tax Act 58 of 1962 - s 89*quat* – interest must be levied on underpayment of tax unless taxpayer’s contention founded on reasonable grounds – whether taxpayer has on reasonable grounds contended that deduction made should have been allowed.

JUDGMENT

MEYER, J (MATOJANE and WEINER JJ concurring)

INTRODUCTION

[1] This is an appeal against part of the order of the Tax Court, Gauteng (Wepener J (A Teichert and A Essat concurring)). The tax court dismissed the appeal of the appellant, Mr Mark Russel Attieh (the taxpayer), against the issuing by the respondent, the Commissioner for the South African Revenue Service (SARS), of an assessment for the 2008 tax year in which the net proceeds of R216 218 233 declared by the taxpayer for the sale of shares was increased by R625 437 601 to R841 655 834 for purposes of calculating the capital gains tax payable on the proceeds from the disposal of shares. There is also a cross-appeal by SARS against the part of the order setting aside its imposition of an understatement penalty of 75% and levying of interest on the underpayment, and substituting it with an order directing that the understatement penalty is to be levied at 10% and the interest levied on the underpayment be remitted in whole.

MATERIAL FACTS

[2] The material facts are essentially not in dispute and agreed. Globalcom Investments Limited (Globalcom) is a foreign company and its business was managed by the taxpayer. Globalcom held 47.3% of the shareholding in Smartphone SP (Pty) Limited t/a Smartcall (Smartcall). The taxpayer was also a shareholder in Smartcall. During September 2003, an offer was received from Vodacom Group (Pty) Limited (Vodacom) to acquire, from the shareholders of

Smartcall, such number of shares in Smartcall as would constitute a 51% shareholding, together with corresponding claims, at a purchase consideration of R295 800 000. Globalcom resolved to totally disinvest in Smartcall and its entire shareholding was accordingly sold to Vodacom for a purchase price of R257 800 000.

[3] During June 2006, Globalcom notified the taxpayer of its intention to institute an action for damages against him. He was advised that Globalcom had discovered that he had not disclosed material information to it when he represented Globalcom in the sale of shares transaction with Vodacom. The information he withheld, according to Globalcom, would materially have affected the decision to dispose of its entire shareholding in Smartcall. The information that the taxpayer was alleged to have withheld from Globalcom was that Vodacom had been agreeable to giving minority rights and protections to shareholders of which Globalcom was not aware. In terms of the shareholders' agreement concluded between Vodacom, the taxpayer and other co-shareholders in Smartcall (dated 31 March 2004), the minority shareholders were afforded a put option against Vodacom in certain circumstances. Globalcom averred that, had it been aware that Vodacom would be prepared to afford a put option in favour of minority shareholders, it would only have sold a *pro rata* portion of its shares, rather than its entire shareholding.

[4] Negotiations between Globalcom and the taxpayer ensued. Globalcom demanded that it be reinstated as a shareholder of Smartcall for it to be put in the position it would have been if it had only disposed of 51% of its shareholding at the time when it had sold its shareholding to Vodacom. The reinstatement of Globalcom as a shareholder in Smartcall would have entailed a transfer of shares to Globalcom from the then 27,005% shareholding of the taxpayer and the 2,995% shareholding of

Mr Leon Richards in Smartcall. They too would then be put in the position they would have been if they had also sold 51% of their respective shareholdings to Vodacom during September 2003. In terms of the shareholders' agreement between Vodacom, the taxpayer and Mr Richards Vodacom was required to waive its pre-emptive rights. Vodacom wished to acquire all the shares in Smartcall and it did not agree to waive its pre-emptive rights.

[5] On 28 August 2007, the taxpayer and Mr Richards sold their entire respective shareholdings in Smartcall to Vodacom. The shares were sold for a total purchase consideration of R935 000 000. The taxpayer's 540 100 shares were sold for R841 655 833 and the 59 900 shares of Mr Richards for R93 344 167. On 3 September 2007, Vodacom paid the purchase price of R935 000 000 into the taxpayer's bank account.

SETTLEMENT BETWEEN GLOBALCOM AND THE TAXPAYER

[6] On 8 October 2007, Globalcom instituted an action for damages against the taxpayer based on his alleged non-disclosure, as Globalcom's agent, of relevant facts, and specifically that Vodacom would have been prepared to agree to extend minority protection to it. The claim was for payment of the amount of R925 000 000 as damages, which amount was alleged to be the value of the shares and claims that Vodacom would have held, but lost, by virtue of it having disposed of all its shares and claims in and against Smartcall. On 15 October 2007, Globalcom and the taxpayer settled the action for damages in terms of a written agreement of settlement. The taxpayer agreed to pay Globalcom an amount of R694 888 271 in full and final settlement of its claim. The agreement of settlement was made an order of court on 31 October 2007.

CAPITAL GAINS TAX

[7] For purposes of calculating the taxable capital gain realised by the sale of his shares in Smartcall to Vodacom, the taxpayer deducted the amount of R625 437 601, which he had paid to Globalcom in terms of the settlement agreement, from the amount of R841 655 833, which Vodacom had paid to him, to arrive at the amount of R216 218 233. This amount of R216 218 233, according to the taxpayer, represents 'the proceeds from the disposal of an asset' as contemplated in para 35(1) of the Eighth Schedule to the Income Tax Act 58 of 1962 (the IT Act). The deduction of R625 437 601 is, according to him, in any event, one that may be made in terms of para 35(3)(c).

[8] The relevant parts of paras 35(1) and 35(3) of the Eighth Schedule to the IT Act read as follows:

'35(1) Subject to paragraphs (2), (3) and (4), the proceeds from the disposal of an asset by a person are equal to the amount received by or accrued to, or which is treated as having received by, or accrued to or in favour of, that person in respect of that disposal, and includes-

. . .

(3) The proceeds from the disposal of an asset by a person, as contemplated in subparagraph (1) must be reduced by-

(a) Any amount of the proceeds that must be or was included in the gross income of that person or that must be or was taken into account when determining the taxable income of that person before the inclusion of any taxable capital gain;

(b) Any amount of the proceeds that has been repaid or has become repayable to the person whom that asset was disposed of; or

(c) Any reduction, as the result of the cancellation, termination or variation of an agreement or due to the prescription or waiver of a claim or release from an

obligation or any other event, of an accrued amount forming part of the proceeds of that disposal.'

[9] SARS conducted an income tax audit on the taxpayer in respect of the 2007 and 2008 tax years of assessment. The tax audit was finalised on 10 December 2012. Following the audit, SARS raised an assessment to subject the full purchase price received from Vodacom to capital gains tax. It increased the net proceeds of R216 218 233 declared by the taxpayer for the sale of his shares in Smartcall by R625 437 601 to R841 655 834, for purposes of calculating the capital gains tax. SARS maintained that the full purchase price of R841 655 833 was deposited in the taxpayer's bank account and was therefore the 'proceeds from the disposal of an asset' as defined in para 35(1). SARS maintained that the taxpayer had understated the proceeds of the disposal of the shares, and, accordingly, also levied an understatement penalty amounting to R46 907 820 in terms of s 222, read with s 223, of the Tax Administration Act 28 of 2011 ('the TA Act').

[10] Section 221 of the TA Act defines 'understatement' as any prejudice to SARS or the *fiscus* as a result of, *inter alia*, 'an incorrect statement in a return'. Subsections 222(1) and 222(2) of the TA Act provides as follows:

'222(1) In the event of an 'understatement' by a taxpayer, the taxpayer must pay, in addition to the 'tax' payable for the relevant tax period, the understatement penalty determined under subsection (2) unless the understatement results from a *bona fide* inadvertent error.

(2) The understatement penalty is the amount resulting from applying the highest applicable understatement penalty percentage in accordance with the table in section 223 to each shortfall determined under subsections (3) and (4) in relation to each understatement in a return.'

[11] The table in s 223 contains the following items of 'behaviour' for the purpose of selecting the highest applicable understatement penalty percentage: (i) 'Substantial understatement'; (ii) 'Reasonable care not taken in completing return'; (iii) "No reasonable grounds for 'tax position' taken; (iv) 'Gross negligence'; and (v) 'Intentional tax evasion'. Each item of behaviour is divided into the following sub-categories: '[s]tandard case'; '[i]f obstructive, or if it is a repeat case'; '[v]oluntary disclosure after notification of audit or investigation'; and '[v]oluntary disclosure before notification or audit or investigation'. Different understatement penalty percentages apply to each item and sub-category.

[12] SARS applied the understatement penalty in item (iii) of the understatement penalty percentage table - '[n]o reasonable grounds for 'tax position' taken' – and the taxpayer's case was considered a 'standard' one. An understatement penalty of 75% was levied.

[13] SARS also levied interest on the taxpayer's underpayment of tax in terms of s 89quat of the IT Act without waiver, in terms of s 89quat(3), of any portion of the interest based on the taxpayer's contention. Subsection 89quat(3) provides as follows:

'Where the Commissioner having regard to the circumstances of the case is satisfied that any amount has been included in the taxpayer's taxable income or that any deduction, allowance, disregarding or exclusion claimed by the taxpayer has not been allowed, and the taxpayer has on reasonable grounds contended that such amount should not have been so included or that such deduction, allowance, disregarding or exclusion should have been allowed, the Commissioner may, subject to the provisions of section 103(6), direct that interest shall not be paid by the taxpayer on so much of the normal tax as is attributable to

the inclusion of such amount or the disallowance of such deduction, allowance, disregarding or exclusion.

GROUND OF APPEAL

[14] The tax court found that the amount of R841 655 833 is the amount which was 'received' by the taxpayer for the disposal of his shares in Smartcall to Vodacom and, consequently, constitutes 'the proceeds from the disposal of an asset' by the taxpayer as contemplated in para 35(1) of the Eighth Schedule to the IT Act. The taxpayer argues that the whole amount of R841 655 833 was not 'received by' him nor did it 'accrue' to him within the meaning of para 35(1) in the light of his legal obligation to settle Globalcom's claim.

[15] 'Received' and 'accrue' are familiar words, often encountered in taxation legislation, particularly in the context of the definition of 'gross income' in s 1 of the TA Act. The definition includes 'the total amount, in cash or otherwise, received by or accrued to or in favour of' a taxpayer. In *Geldenhuis v Commissioner for Inland Revenue* 1947 (3) SA 256 (C), at 269, Herbstein AJ said the following:

'Technically it may be said that if the purchase price is paid to him it is 'received' by him. But, in my opinion, the expression 'received by him' means that the money must be received by him in such circumstances that he becomes entitled to it.'

[16] In *Commissioner for Inland Revenue v Genn & Co (Pty) Ltd* 1955 (3) SA 293 (A), at 301B-G, Schreiner JA, said the following about the meanings of the words 'received' and 'accrue':

'I have grave doubts whether this argument does not fail at the outset on the ground that borrowed money is not received nor does it accrue within the meaning either of the definition of 'gross income' or of sec. 12 (f). It is difficult to see how money obtained on loan can, even for the purposes of the wide definition of 'gross income', be part of the income of the

borrower, any more than the value of the tractor which the farmer borrows is to be regarded as being income received otherwise than in cash. Though a borrower for use differs from a borrowing for consumption in that the borrower in the former case does not become the owner of the thing borrowed and must return it *in specie*, while in the latter case he does become the owner and is only obliged to return what is similar, for present purposes there would seem to be no difference between the two cases. Nor would it seem to make any difference whether or not hire is paid for the use of the tractor or interest for the use of the money. Neither in the case of the borrowed or hired tractor nor in the case of the borrowed or 'hired' money does it seem to accord with ordinary usage to treat what is borrowed or hired as a receipt within the meaning of sec. 12 (f). It certainly is not every obtaining of physical control over money or money's worth that constitute a receipt for the purposes of these provisions. If, for instance, money is obtained and banked by someone as agent or trustee for another, the former has not received it as his income. At the same moment that the borrower is given possession he falls under an obligation to repay. What is borrowed does not become his, except in the sense, irrelevant for present purposes, that if what is borrowed is consumable there is in law a change of ownership in the actual thing borrowed.'

[17] The meaning of the word 'accrue' was explained by Plewman JA in *Commissioner, South African Revenue Service v Executor, Frith's Estate* 2001 (2) SA 261 (SCA), thus:

[5] 'Accrue' is a familiar word often encountered in our law – particularly, in the law of succession and in taxation legislation where it is usually encountered in a disjunctive sense in phrases such as 'receipts or accruals'. The *Shorter Oxford English Dictionary* gives (in the sense appropriate to the context in which we find the word) the meaning 'to come as an accession or advantage'.

[6] In our jurisprudence the word is, in general, used in contexts which require that it be given the meaning 'entitled to' in contrast to a meaning such as 'actually receive or received'. This too seems to the sense in which the word is, for example, used in America. *Black's*

Law dictionary (1979 ed) gives numerous examples illustrating this. Some of the examples are: 'alimony which is due but not yet paid'; 'expenses incurred but not yet paid'; interest which has been earned but is not yet paid or payable'. The primary meaning of the word accrue would thus seem to me to involve a nuance which contrasts it with a meaning such as 'has been received' or 'will be actually received'.

[18] The context in which the words 'received by' and 'accrued to' are used in para 35(1), in my view, similarly require that the word 'received' be given the meaning 'has been or actually received' in such circumstances that the recipient becomes entitled to it and the word 'accrued' the meaning 'entitled to' in contrast to the meaning 'actually received'. The 'proceeds from the disposal of an asset by a person' are, in terms of para 35(1), equal to the amount received by, or accrued to 'that person in respect of that disposal'. The receipt or accrual relates to the disposal.

[19] I agree with the tax court that the taxpayer was unconditionally entitled to the whole amount of R841 655 833 as consideration for the sale of his shares in Smartcall to Vodacom and that that amount was actually received by him. The 'disposal' was the sale of his shares, and the amount of R841 655 833 'accrued to' him and was 'received by' him as the consideration for that disposal. There was no obligation on Vodacom to pay any amount to Globalcom in respect of the sale of shares nor was there any obligation on the taxpayer to pay part of the purchase consideration to Globalcom, at that time. No one else but the taxpayer received or was, in terms of the sale of shares agreement, entitled to any part of the purchase consideration of R841 655 833. The taxpayer's motive for selling his shares in Smartcall to Vodacom is, as was held by the tax court, wholly irrelevant.

[20] This brings me to the alternative argument of the taxpayer, which is that if the whole amount accrued to him or was received by him, within the meaning of para 35(1), the amount falls to be reduced by the amount of R625 437 601 paid by him to Globalcom, such payment being 'any other event', as contemplated in para 35(3)(c). There is, in my view, no merit in this argument either. The tax court found that the 'deduction' provided for in para 35(3)(c), on a proper interpretation of that provision, finds no application to the payment of R625 437 601, which the taxpayer made to Globalcom in terms of the settlement agreement. I am, with respect and for the reasons which follow, in agreement with the tax court that the words 'any other event' in para 35(3)(c) are *ejusdem generis* with the immediately preceding words in that paragraph. The 'event' on which the taxpayer relies – its payment to Globalcom in terms of the settlement agreement – does not fall within the ambit of the deductions contemplated in para 3(5)(c). Silke on *South African Income Tax* Vol 1 at 2-28 states:

'The fate of the income after it has accrued or been received is therefore of no consequence to the tax-gatherer. The ultimate destination of the income cannot affect its nature as income.'

[21] The following definition of the *ejusdem generis* rule was given by Innes CJ in *Director of Education, Transvaal v McCagie and others* 1918 AD 616, at 623:

'General words following upon and connected with specific words are more restricted in their operation than if they stood alone. *Noscuntur a sociis*; they are coloured by their context; and their meaning is cut down so as to comprehend only things of the same kind as those designed by the specific words- unless of course, there is something to show that a wider sense was intended.'

(Also see: *Commissioner for Inland Revenue v Lunn* 1924 AD 94, at 99; *Commissioner of Customs v Joffe* 1934 WLD 8, at 10-11.) There must be a distinct

genus or category for the *ejusdem generis* rule to find application. (See *Santam Versekeringsmaatskappy Bpk v Kruger* 1978 (3) SA 656 (A), at 663E-F.)

[22] In *Commissioner for Inland Revenue v Ocean Manufacturing Ltd* 1990 (3) SA 610 (A), at 618G-I, Nicholas AJA said the following about the word ‘any’:

‘Any is a ‘word of wide and unqualified generality. It may be restricted by the subject-matter or the context, but *prima facie* it is unlimited.’ (Per Innes CJ in *R v Hugo* 1926 AD 268 at 271.) ‘In its natural and ordinary sense, *any* – unless restricted by the context – is an indefinite term which includes all of the things to which it relates.’ (Per Innes JA in *Hayne & Co v Kaffrarian Steam Mill Co Ltd* 1914 AD 363 at 371.)

[23] The particular words to which the general words ‘any other event’ relate in subparagraph 3(c), are the events of ‘cancellation, termination or variation of an agreement or due to the prescription or waiver of a claim or release of an obligation’. A cancellation terminates the relationship between the parties to the transaction. (See *Secretary for Inland Revenue v Hartzenberg* 1966 (1) SA 405 (A), at 409H.) Prescription extinguishes a debt, anything that is owed or due. (See *Electricity Supply Commission v Stewarts & Lloyds of SA (Pty) Ltd* 1981 (3) SA 340 (A)). The effect of the waiver of a right is to extinguish that right and the concomitant obligation (See *Laws v Rutherford* 1924 AD 261.)

[24] The ‘proceeds’ (the amount received by or accrued to the person who disposed of an asset, in respect of that disposal) must be reduced by any reduction in the amount to which the person who disposed of the asset became entitled, in respect of that disposal, as a result of or due to the occurrence of the specific events listed in subparagraph (3)(c). These specific events all affect the rights or entitlements and concomitant obligations of the counter parties to the disposal - the person who disposed of the asset and the person to whom it was disposed. The

reduction applies to the extent that the entitlement of the person to the amount that was owed or due to him for the disposal is reduced or extinguished. The concomitant obligation, of the person to whom the asset was disposed, to pay, is similarly reduced or extinguished.

[25] The general words - 'or any other event' – are, therefore, restricted by the context. They cannot possibly refer to an event that does not affect the rights and concomitant obligations of the parties to the disposal of an asset. There is nothing to show that a wider sense was intended. The deduction provided for in para 35(3)(b) also relates to an event (any amount of the proceeds that has been repaid or become repayable to the person to whom the asset was disposed of) that affects only the rights and concomitant obligations of the counter parties to the transaction. To conclude: the words, 'or any other event', are, no doubt, wide, but, within their context in para 35(3), to borrow the words of Innes CJ in *McCagie* (supra) 623, 'their interpretation must be affected by what precedes them'. The taxpayer's appeal to this full court must, in my view, fail.

CROSS APPEAL

[26] SARS concluded that the taxpayer had made an incorrect statement in his tax return for the 2007 – 2008 tax period and that he, consequently, in terms of s 222 read with s 221 of the TA Act, was obliged to pay the highest applicable understatement penalty percentage in accordance with the table in s 223. In applying the table, it categorised his behaviour as falling under item (iii), '[n]o reasonable grounds for 'tax position' taken'. It considered the taxpayer's case a standard one and imposed an understatement penalty percentage of 75%.

[27] The tax court found that, having received advice from a tax practitioner, there were reasonable grounds for the position which the taxpayer adopted and that it can also not be said that he did not take reasonable care in completing his tax return. The tax court was persuaded by the following *dictum* in *Estate of Spruill v Commissioner* (88 TC 1197 (1987)), which is a decision of the Tax Court in the United States of America:

'When an accountant or attorney advises a taxpayer on a matter of tax law, such as whether a liability exists, it is reasonable for the taxpayer to rely on that advice.

The tax court directed that an understatement penalty percentage of 10% be levied on the basis that the taxpayer's behaviour fell under item (i) of the table in s 223 - '[s]ubstantial understatement' – and that his case was a standard one.

[28] I am not persuaded that the tax court erred in holding that, having received advice, there were reasonable grounds for the taxpayer to take the position which he did. The determination of the extent of the taxpayer's capital gains tax liability arising from the sale of his shares in Smartcall to Vodacom required an interpretation of para 35 of the Eighth Schedule to the IT Act. The taxpayer relied on expert advice on a matter of tax law in adopting the tax position which he took.

[29] It was also argued before us that the tax court erred in applying the provisions of s 222 read with s 223 since s 223 came into operation on 1 October 2012 and applies to tax returns submitted from that date. It is common cause that the taxpayer's tax return under consideration was submitted during the year 2010. Section 270(6D) of the TA Act, so it was submitted, applies to tax returns that were submitted prior to 1 October 2012.

[30] The relevant part of s 270(6D) reads as follows:

'If an understatement penalty is imposed as a result of an understatement, as defined in section 221, made in a return submitted before the commencement date of this Act, a taxpayer may object against the penalty under Chapter 9 (whether or not the taxpayer has previously objected against the assessment imposing the penalty) and if the return was required under-

(a) the Income Tax Act, a senior SARS official must, in considering the objection, reduce the penalty in whole or in part if satisfied that there were extenuating circumstances; . . . '.

[31] The tax court found as follows:

'The appellant suggested that the provisions of s 270(6D) would allow for a reduction of the penalty to nil. I have no evidence that there were extenuating circumstances which would warrant the reduction below the provisions of s 223, ie a 10% penalty for a substantial understatement.'

[32] It seems to me, therefore, that the tax court considered the imposition of a proper understatement penalty percentage, both in terms of s 222 read with s 223 and in terms of s 270(6D), and concluded that the same result should follow; a reduction of the understatement penalty percentage to 10%. The table in s 223 guided the tax court in reaching a decision on whether the understatement penalty should be reduced in terms of s 270(6)(D) and to what extent it should be reduced. I respectfully agree with the conclusion reached by the tax court. It is accordingly unnecessary for us to consider the question whether the tax court erred in applying the provisions of s 222 read with s 223 of the TA Act in the determination of the appropriate understatement penalty percentage.

[33] The tax audit revealed that the taxpayer wrongly deducted the amount of his payment to Globalcom in terms of the settlement agreement from the proceeds from the sale of his shares in Smartcall to Vodacom. Interest must, in terms of s 89*quat*

of the IT Act, accordingly be levied, unless, in terms of s 89^{quat}(3), 'the taxpayer has on reasonable grounds contended' that the deduction he made should have been allowed in the calculation of the proceeds derived from the disposal of his shares. SARS considered the taxpayer's contention not to have been founded on reasonable grounds and levied interest, without deduction, in terms of s 89^{quat}.

[34] The tax court relied on the following passage in the commentary by Dennis Davis *et al* on s 89^{quat}(3) in *Juta's Income Tax* Vol 2:

'The test as to whether the grounds are reasonable, is objective, in relation to actions of the taxpayer. A mere subjective belief by the taxpayer that a deduction should be allowed, without taking advice on the matter, is unlikely to be reasonable. On the other hand, the reliance by the taxpayer on expert advice, even if this is wrong, will in most cases constitute reasonable grounds for the action taken.'

[35] The tax court then found that '[t]here is no reason not to find that the appellant's reliance on advice was reasonable' and that '[n]o facts were proved to show that the appellant was nevertheless unreasonable.' I am unable to fault these findings. The cross-appeal must, therefore, also be dismissed.

[36] In the result the following order is made:

- (a) The appeal is dismissed with costs, including those of two counsel.
- (b) The cross-appeal is dismissed with costs, including those of two counsel.

P.A. MEYER
JUDGE OF THE HIGH COURT

I agree:

K.E. MATOJANE
JUDGE OF THE HIGH COURT

I agree:

S.E. WEINER
JUDGE OF THE HIGH COURT

Date of hearing:	10 February 2016
Date of judgment:	11 August 2016
Counsel for appellant:	PJJ Marais SC (assisted by C Louw SC)
Instructed by:	Edward Nathan Sonnenbergs Inc., Sandton
Counsel for respondent:	PM Mtshaulana SC (assisted by L Kutumela)
Instructed by:	The State Attorney, Johannesburg