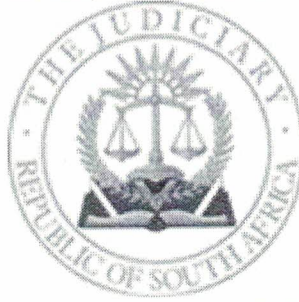


REPUBLIC OF SOUTH AFRICA



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

APPEAL CASE NO: A52/2021

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED.
.....16/05/2023.....	
DATE	SIGNATURE

In the matter between:

SESHIN NARDAIDU

APPELLANT

And

THE STATE

RESPONDENT

NEUTRAL CITATION: *Seshin Nardaidu vs The State* (Case Number:
A52/2021) [2023] ZAGPJHC 489 (16 May 2023)

MABESELE J ET KUMALO J

J U D G M E N T

MABESELE, J:

[1] The appellant was convicted of fraud in that he did unlawfully and intentionally submit false information to SARS on behalf of his client, thus inducing SARS to accept and believe that his client was entitled to a refund. The appellant is a registered tax practitioner. He was previously employed by SARS and later joined Liberty Life Insurance Company. He appeals against this conviction on the basis that he never supplied false information to SARS.

[2] The appellant was accused 3 in the court below. Accused 1 is a Close Corporation called Serghony Shoes Fashion CC. Accused 2 is Pierre Mbombe. He was the sole member and representative of accused 1.

[3] The evidence is that during December 2013 the employee of SARS by the name of Khutso Lejeku investigated a matter which involved accused 1. The investigation was triggered by an enquiry that was made by the appellant via two emails about the cause of the delay of the VAT refund of accused 1. The refund was for the periods, July and September 2013, respectively. The amount expected for each period was R2 700 000 (Two Million And Seven Hundred Rand). The email dated 03 December 2013 reads:

'I want to query on the delay for the VAT refund for period 2013/07 and 2013/09. Supporting documents have been submitted, bank details are correct and valid. I have followed up at the call centre and sent a PCC¹ request with no success. According to the SARS E-filing, the audits for both

¹PCC is a unit attached to Alberton to escalate urgent matter.

periods have been finalised as per dashboard. Please assist, client is frustrated. I do not know what excuse to give the client anymore'

[4] The supporting documents were already loaded on the system to substantiate the refund claim. Lejeku printed out the said documents to see the suppliers of accused 1. The documents included two tax invoices that were supplied by Brother Discount Trading CC which alleged to have sold expensive clothes to accused 1. The total amount on the first invoice was R22 000 000.00 (Twenty-Two Million Rand) and VAT amounting to R291 000 00 (Two Hundred And Ninety-One Thousand Rand). The second invoice reflected the total amount of R19 000 000.00 (Nineteen Million Rand) and VAT amounting to R139 000.00 (Hundred And Thirty-Nine Thousand Rand). The invoices were dated 12 June and 10 July 2013, respectively. The address of the Brother Discount Trading CC was reflected in the documents and the company was situated in Lichtenburg, in the North- West Province. After Lejeku had perused the documents he drove to Lichtenburg to check the existence of the company. Upon arrival at the address reflected in the documents he found a supermarket which sold food and drinks. He interviewed both the manager and employee in the supermarket and none of them knew the company called Brother Discount Trading CC. On his return from Lichtenburg he informed his seniors about what he came across there. It was then decided that a stop bar code 4 be placed on the account of accused 1 so that the funds are not released.

[5] Mr Lebakeng, also an employee at SARS, testified that on 24 January 2014 he contacted the appellant telephonically about a query that the appellant had raised via e-mails with regard to a refund of accused 1. The e-mails were loaded on the SARS system. The e-mail dated 27 November 2013, reads:

'Good day Serghony Shoes Fashion CC Vat number 450244279. I want to query on the delay for the VAT refund for periods 2013/07 and 2013/09. Are there supporting documents required. Does the bank details need to be updated? I have followed up at the call centre and sent a PCC request with no success. Please assist. Client is frustrated. I do not know what excuse to give the client anymore'

[6] Lebakeng testified that the appellant initially agreed to meet him at the SARS offices in Alberton on the same day that he made a call. The meeting was intended to discuss the e-mails which the appellant sent to SARS. However, the appellant did not honour his appointment and gave no explanation for his failure to attend the meeting.

[7] The appellant testified that one of his previous clients referred his clients to him. One of the clients that was referred to him was someone he referred to as "supposed owner" of Serghony Shoes Fashion CC (accused 1) He arranged a meeting with the owner at the Dros in Midrand. It was during the week of the 20th to 24th October 2013. He was asked by his counsel, during

evidence-in-chief, to tell the court who was the owner that he arranged a meeting with. He responded as follows: 'With the accused'. It was put to him by his counsel that he initially said he met with the co-owner. He responded as follows: No, I never said co-owner'. He reiterated that he met with 'a person from Serghony Shoes Fashion CC who is supposed to be claimed as the owner'.

[8] The appellant testified that during the course of the meeting about Liberty Life and its policies the owner gave him the CK documents of the company and sought assistance on the VAT refund that was due to the company. The owner informed him about specific period that he should enquire on. His counsel asked him to explain what made him believe that the person that he was talking to was the owner of Serghony Shoes Fashion CC. He responded as follows: 'the client had his driver's licence on hand and he had the CK documents for the company'. He testified that he does charge fees for service rendered and that the standard rate depends on whether it is a return to be filed or an enquiry or objection to be made. He went further to say that he undertook to client to make a follow up on the VAT refund. It was for that reason, he said, that he forwarded the e-mail to SARS and asked about the refund of accused 1.

[9] Despite the fact that the appellant consistently said that he had a meeting with the owner of accused 1, his counsel, regrettably, put words into his mouth as follows: 'When you say client Mr Naraidu, was it the white guy Diambong'.

The appellant responded as follows; 'Yes, it was the same client that I had met'. He testified that he did not open a file for him.

[10] Although the appellant testified during cross-examination by counsel for accused 2 that the accused has never given him instructions to enquire about the refund of accused 1 he said that Mr Mbombe (accused 2) who came to him was in possession of a driver's licence and CK documents.

[11] The state has a duty to prove its case against the accused beyond reasonable doubt and the appellant's version must only be reasonably possibly true to secure his acquittal. That said, it is not required from the state to close all the loop holes completely in order to discharge the burden on it.

[12] The evidence of Lejeku is clear that the documents that were forwarded to SARS for a refund allegedly due to accused 1 were fraudulent. The Brother Discount Trading CC which claimed to have sold clothes to accused 1 did not exist. The amount of money claimed for the periods, July and September 2013, as a refund, was approximately R5 400 00.00 (Five Million And Four Hundred Thousand Rand)

[13] It is common cause that the appellant forwarded e-mails to SARS and enquired about the refund.

[14] The respondent's argument in the court below was that it cannot be true that the appellant, an experienced tax practitioner, would assist someone whom he referred to as 'client', without opening a file for him. It was argued that the appellant was aware that the documents were fraudulent and a refund was expected. It is for this reason that the appellant did not enquire from SARS whether there was a refund or not. This argument was again presented in this Court and further argued that the appellant had ceased to enquire about the refund after he became aware of the investigation and deliberately avoided to attend the meeting at the SARS offices.

[15] The version of the appellant that he merely enquired from SARS about the refund of accused 1 without him having the insight of the supporting documents is not reasonably possibly true for the following reasons: Firstly, the appellant, in his e-mail dated 03 December 2013, assured SARS that the banking details of accused 1 were correct and valid. For him to say that, he must have perused the supporting documents of accused 1 and had verified the banking details. Secondly, the appellant was in possession of the CK documents of accused 1, thus suggesting that accused 1 was his client. Thirdly, the appellant testified in his evidence-in-chief that he had a meeting with accused 2 who gave him the CK documents of accused 1 and requested him to assist him with the refund of accused 1. Fourthly, the appellant consistently made enquires about the refund of accused 1 (because he had the insight of the fraudulent supporting documents). If the appellant had no insight of the supporting documents he would have enquired from SARS whether there was money owed to SARS or due to accused 1. For these

reasons, the appellant is correctly convicted of fraud and the appeal should be dismissed.

[16] In the result, the following order is made.

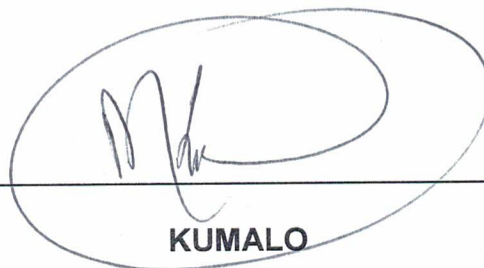
16.1 The appeal against conviction is dismissed.

A handwritten signature in dark ink, appearing to read 'Mabebele', is written over a horizontal line.

M.M MABESELE

(Judge of the High Court Gauteng Local Division)

I agree

A handwritten signature in dark ink, appearing to read 'KUMALO', is written over a horizontal line.

KUMALO

(Judge of the High Court Gauteng Local Division)

Date of Hearing : 08 May 2023

Date of Judgment : 16 May 2023

Appearances

On behalf of the Appellant : Adv M. Wits

Instructed by : Rian Louw Attorneys

On behalf of the Respondent : Adv. L. Jobo

Instructed by : Director of Public Prosecutions