



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Case No: 472/12
Not Reportable

In the matter between:

TREVOR BRIAN ROBINSON

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation: *Robinson v State* (472/12) [2013] ZASCA 77 (30 May 2013)

Coram: PONNAN, TSHIQI JJA, ERASMUS, PLASKET and MBHA AJJA

Heard: 22 May 2013

Delivered: 30 May 2013

Summary: Criminal Law – whether the appellant was correctly convicted on two counts of fraud – whether the trial court erred in finding that the appellant made false representations to the complainant – whether the court a quo erred in finding that the appellant had submitted the alleged fraudulent invoices to the complainant and thereafter demanded payment in respect thereof.

ORDER

On appeal from: North Gauteng High Court (Pretoria) (Wright AJ and Prinsloo J sitting as court of appeal):

1. The appeal is upheld.
2. The order of the court a quo is set aside and in its stead is substituted with the following:
(a) The appeal of both appellants succeeds and their convictions and sentences imposed pursuant thereto are set aside.'

JUDGMENT

ERASMUS AJA (PONNAN and TSHIQI JJA and PLASKET and MBHA AJJA concurring):

[1] The appellant, together with a non-natural juristic entity that he allegedly represented, was charged and convicted in the Oberholzer Regional Court on 31 counts of fraud. Both appealed to the North Gauteng High Court. The appeal of the juristic entity was wholly successful. In so far as the appellant was concerned, the appeal succeeded in all, save two of the counts. The further appeal solely in respect of the convictions on those two charges is with the leave of the high court.

[2] The complainant, Goldfields International Mining South Africa (Pty) Ltd, operates the Driefontein mine in the district of Oberholzer. The supply of hot water to the change rooms for workers was inadequate and had to be rectified as a matter of urgency. Oberholzer Timber and Hardware CC (Timber and Hardware), of which the appellant was a member and who was a supplier and contractor of the complainant for many years, was requested to and did submit a quotation for the work required.

On 3 June 2009 Timber and Hardware submitted two quotes that formed the subject matter of the charges herein, for cladding of piping and associated fittings to two areas on the site; 515 metres at the 'living out change house' to the value of R94 801,66 and 630 metres at the 'union men's and official change house' to the value of R111 524,35. Each quotation had an additional charge of R75 000 for 'bends', 'tees', 'reducers' and 'taps'. In respect of both these quotations it included a sentence that read '[o]nly an estimate can be given, a bill will be given on completion of application'.

[3] The said quotations were accepted by the complainant and the work was carried out by a sub-contractor on behalf of Timber and Hardware, in terms of a sitework agreement. The agreement was signed on behalf of Timber and Hardware by the appellant and on behalf of the complainant by a Mr Patel, the Unit Manager Procurement. The quotations found its way into the agreement. Mr Patel conceded during his evidence that they could have been interpreted to mean that a final reconciliation could be done 'once the job is completed'.

[4] After the work was carried out, Mario Nieuwoudt, an employee of Timber and Hardware, presented two invoices dated 24 July 2009 to the complainant. The amounts on the invoices were identical to those reflected on the quotations save for the 'bends', 'tees', 'reducers' and 'taps', which were not included. The invoices were approved by Buys and sent to the accounts' person at the complainant (Ms Sale) for payment. Buys confirmed that Nieuwoudt told him at the time of the presentation of the invoices that the work charged for was incomplete. Buys was therefore aware at the time of signing off on the invoices that there was still outstanding work to be done. He was however satisfied that payment could be made. It is important to note that the invoices made no reference to meterage. On 3 August 2009 the invoices were approved for payment by the complainant through Mrs Sale.

[5] On 4 September 2009 Mario Nieuwoudt and Ms Sale did a final measurement as a result of a later invoice presented by Timber and Hardware that prompted an enquiry. (This invoice is however irrelevant to the charges upon which the appellant was convicted.) The physical measurements differed from the meterage stated in the quotations. The evidence of Mrs Sale was that the measurement was done in order

for the parties to agree on the meterage. That discrepancy appears to have triggered the complaint.

[6] There is no evidence that the invoices that were submitted were generated by the appellant, submitted by him or that he had any role in the preparation thereof. In fact they were submitted by Mario Nieuwoudt after the work was done by the sub-contractor. There was thus no evidence that the appellant had made any misrepresentation - much less a fraudulent one - that had induced the complainant to act to its prejudice. It had to follow therefore that the conviction could not stand.

[7] In the result it is ordered:

1. The appeal is upheld.
2. The order of the court a quo is set aside and in its stead is substituted with the following:

'(a) The appeal of both appellants succeeds and their convictions and sentences imposed pursuant thereto are set aside.'

N C ERASMUS
ACTING JUDGE OF APPEAL

APPEARANCES

APPELLANT: J L C J van Vuuren SC

Instructed by:

Jooste Slabbert & Moodie, Carletonville

Symington & De Kok, Bloemfontein

RESPONDENT: P W Coetzer

Instructed by:

Director of Public Prosecutions, Pretoria

Director of Public Prosecutions, Bloemfontein