



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case No.: A282/2017

In the appeal between:

ELLIOT ALBERT MGCIRA

Appellant

and

THE STATE

Respondent

CORAM: MATHEBULA, J et VAN RHYN, AJ

JUDGMENT BY: MATHEBULA, J

HEARD ON: 23 APRIL 2018

DELIVERED ON: 10 MAY 2018

- [1] This is an appeal against a conviction for fraud and falsification of documents. The appellant was refused leave to appeal by the district magistrate and same was granted by members of this Court.

- [2] On 24 August 2015, the appellant was driving a motor vehicle with registration letters and number [...] on the N1 freeway near Warden. He was ferrying passengers for reward. He was stopped by the traffic officers who demanded to see the necessary Operating License. He duly handed them a document purporting to be a valid Operating License. On inspection the Traffic Officer concluded that it was invalid and the necessary charges were laid, followed by prosecution thereof. The appellant explained that he purchased it from one Mr Khubeka residing at Riverside, Qwa-Qwa. He had been operating with it and it was accepted by a Taxi Association in Gauteng. Also on a number of occasions he had been stopped by other traffic officers who found it acceptable. He was unaware that it was falsified.
- [3] The evidence of the deputy director and secretary of the Free State Licensing Board was to the effect that the document was falsified in that its numbers referred to a Mr Dlamini of Kroonstad. According to records under his custody and control the appellant was not registered as a public transport operator. He explained that a taxi permit cannot be sold between parties because it is the property of the government.
- [4] Counsel for the respondent correctly conceded in the heads of argument filed on 9 April 2018 that the appeal should be upheld. Counsel for the appellant did not make further submissions and referred us to the heads of argument filed of record.

- [5] The appellant was charged with fraud in that he pretended to the law enforcement officer that he was in possession of a valid operating license. Secondly he contravened the provisions of section 68 (3) read with section 69, 73, 89(1) and 89(5) of Act 93 of 1996. Section 68 (3) of Act 93 of 1996 reads as follows:-

“68(3) No person shall-

- (a) Falsify or counterfeit or, with intent to deceive, replace, alter, deface or mutilate or add anything to a certificate, licence or other document issued or recognised in terms of this Act; or**
- (b) Be in possession of such certificate, licence or other document which has been falsified or counterfeited or so replaced, altered, defaced or mutilated or to which anything has been so added.”**

- [6] In this matter the Operating License was issued in terms of the National Land Transport Act of 2009. The Operating License can be validly ceded or transferred by the holder to another person in terms of section 58 of Act 5 of 2009. In the event that such transfer does not occur in term of the aforementioned section, section 77 declares such a transaction to be invalid and has no legal force. No offence is created by the same Act.

- [7] It appears that the learned district magistrate was swayed by the evidence of Mosia who made certain legal submissions which were incorrect. Regrettably he did not verify them by studying the relevant Act before accepting his evidence. In this regard he erred.

- [8] It is trite that the accused person does not have to convince the court of his innocence. He must proffer a version that is reasonably

possibly true. If his version is reasonably possibly true, he must be acquitted even though his explanation is improbable.¹

[9] In this matter the appellant maintained from the beginning that he bought the Operating Permit from a Mr Khubeka. Further that he has been using it for some time and he has not picked up any trouble about it. The learned district magistrate adopted the reasoning that he ought to have known that the Operating License permit was falsified because of the time he has been in the taxi industry. This reasoning is incorrect. The learned district magistrate did not state in precise terms what was inherently untrue to reject the version of the appellant. The learned district magistrate should have found that this version is reasonably possibly true and acquitted him.

[10] For the foregoing reasons, the appeal ought to succeed.

[11] Accordingly I make the following order:

11.1 The appeal is upheld.

11.2 Both convictions and sentences are set aside.

M. A. MATHEBULA, J

¹ S v V 2000 (1) SACR 453 (SCA) at 455 A – C.

I concur.

I VAN RHYN, AJ

On behalf of the appellants:
Instructed by:

Adv. S. Kruger
Bloemfontein Justice Centre

On behalf of the respondent:
Instructed by:

Adv. S. Giorgi
Director: Public Prosecutions
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