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**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

Appeal no: **AR28/2023**

In the matter between:

MBONELENI ERNEST GOQO

APPELLANT

and

THE STATE

RESPONDENT

Coram: Balton J and Mossop J

Heard: 10 May 2024

Delivered: 17 May 2024

ORDER

On appeal from: Durban Regional Court (sitting as the court of first instance):

The appeal against conviction is dismissed.

JUDGMENT

MOSSOP J (Balton J concurring):

[1] The appellant is a constable in the South African Police Services (the SAPS). He stood charged on a single count of corruption in terms of the Prevention and Combating of Corrupt Activities Act 12 of 2004. It was alleged by the State that he had unlawfully, and for his own benefit, accepted R4 000 in cash from a Ms Amina Sidat (Ms Sidat) to release her motor vehicle, a VW Polo with registration mark N[...] 1[...] (the impounded vehicle), from the SAPS motor vehicle pound situated in Isipingo, KwaZulu-Natal. He pleaded not guilty to that count, but was convicted and sentenced to six years' imprisonment, half of which was suspended for three years. He appeals against his conviction only, with the leave of this court.

[2] Ms Sidat purchased the impounded vehicle second hand and took it to the SAPS pound at Isipingo in March 2018 to have a SAPS vehicle clearance issued. She testified that she had never before purchased a motor vehicle. The appellant was the SAPS officer who attended to her when she arrived at the SAPS pound. He determined that there was a problem with the impounded vehicle, as its chassis number did not match the chassis number in the logbook attaching to it. The appellant consequently declined to clear it or to release it back into Ms Sidat's possession and then impounded it. The impounded vehicle thus remained at the SAPS pound. Ms Sidat returned there on four further occasions to ascertain what was to happen with the impounded vehicle, but the appellant was never there when she called.

[3] On 18 June 2018, Ms Amin's brother-in-law ascertained that if the impounded vehicle was to be released, some money would have to be paid. The sum mentioned was R4 000. Ms Sidat testified that, as this was the first car that she had ever bought, she believed that what she was being asked to pay was a normal impost charged by the SAPS. She explained, perhaps naively, that she had to pay for a certificate of roadworthiness and for a security feature called DataDot and believed that this was a further payment that had to be made.

[4] Ms Sidat accordingly borrowed the R4 000 from her mother and then went to the Isipingo pound on 19 June 2018. She and her brother-in-law, Mr Fahim

Mahomed (Mr Mahomed), sat there the whole morning awaiting the arrival of the appellant. He eventually arrived mid-afternoon, and they went into his office. Mr Mahomed handed over the R4 000 to the appellant. It was made up of R100 notes and, according to Ms Sidat, they were placed in the appellant's pocket after he had counted them. He then left the office, returning ten minutes later, and brought a form with him that would permit the impounded vehicle to be released to Ms Sidat. Because of the lateness of the hour, Ms Sidat was not able to secure the release of the impounded vehicle that day. She returned the next Monday to get the impounded vehicle. However, when she proceeded to inspect the impounded vehicle, it was found to be without its rims, tyres, and radio. All those items had been on the vehicle when it was initially impounded.

[5] Ms Sidat was then directed to go and see a Colonel Els (Col Els), who had an office upstairs in the pound building. This she did, and she met with him. He confirmed when he was called to testify at the trial that he had met her and had received her complaint about the state of the impounded vehicle. He explained the options available to her and when she left his office, he called for the SAP13 register, being the exhibit register in which the details of all motor vehicles received at the pound must be recorded. He did this to check what the condition of the impounded vehicle was when it had first been impounded by the appellant. That check confirmed that it had wheels, tyres, and a radio when first seized. About an hour and a half later, someone called him on his office landline telephone, and he was told by this anonymous caller that Ms Sidat had been required to pay R4 000 to the appellant to get the vehicle released and he was urged not to release the impounded vehicle. Col Els immediately went down to the vehicle inspection area of the pound and found Ms Sidat still there and standing next to the impounded vehicle.

[6] Col Els testified that he asked Ms Sidat whether she had paid any person any money to have the impounded vehicle released to her. Her immediate answer to him was:

‘Yes, I had to pay Constable Goku¹ (sic) an amount of R4 000 in order to have my vehicle released.’

Col Els testified that he understood that this money had been paid to the appellant the week before. He then went to his office and immediately reported what he had learned to the appellant’s senior officer, as the appellant was not under his direct command. The impounded vehicle was not released that day, nor was it ever released. Col Els testified that no money is ever required to be paid for the services rendered by the SAPS pound, especially not for the release of a motor vehicle from the pound.

[7] Ms Sidat’s husband, a witness to what allegedly occurred at the pound, was not called to testify. The reason advanced for this was that he had suffered a stroke. Mr Mahomed was accordingly the final witness for the State. He indicated that he was a mechanical fitter by trade and said that he had been present when the money was paid and had interacted with the appellant. He had gone with Ms Sidat and her husband to the SAPS pound at Isipingo. There, he had met with the appellant and gave him what he described as being ‘money for release fees of my sister-in-law’s cars’. It was never suggested that Ms Sidat had more than one motor vehicle at the pound and the reference to ‘cars’ is obviously a slip of the tongue.

[8] Mr Mahomed testified that he had learned that a release fee of R4 000 had to be paid to secure the release of the impounded vehicle. According to Mr Mahomed, how this all happened had started in the mess room at the Sapref oil refinery where he works. He had been on lunch one day and had mentioned the problems that his sister-in-law was having at the pound. A work colleague overheard him and said that he knew someone at the pound and would have a word with him. That connection was, apparently, the appellant, and Mr Mahomed stated that he was provided with the appellant’s name. A week later, Mr Mahomed’s colleague reverted to him and told him that he was to go to the pound and meet with the appellant and that it would cost R4 000 to get the impounded vehicle released. Mr Mahomed confirmed that he

¹ Throughout the transcript of proceedings, the transcriber has incorrectly spelt the appellant’s surname of ‘Goqo’ as ‘Goku’.

paid that sum of money over to the appellant in R100 notes. That payment was made, so Mr Mahomed testified:

‘To push the papers – you know, to get out the car as quick as possible, you’ve got to pay the price in order to push the papers.’

[9] Having paid over the money to the appellant, Mr Mahomed testified that he did not observe whether he counted it. Some papers were then handed over by the appellant and they were told that the impounded vehicle should be ready to be uplifted the next week. They then left and his sister-in-law went back the following week, only to find the wheels and tyres missing from the impounded vehicle.

[10] To this direct evidence, the appellant presented his version which was comprised simply of a denial that he had accepted any money from Ms Sidat or her brother-in-law. He confirmed that she had come to see him on 20 June 2018 in the company of two other people. He had explained to her that the impounded vehicle was to be returned to her. He speculated that Ms Sidat and her brother-in-law believed that he was involved in purloining the rims, tyres, and radio from the impounded vehicle. He testified that he had faced an internal disciplinary hearing but had been acquitted. It was not disclosed, however, whether this inquiry related to the cash allegedly paid over to him or to the loss of the equipment from the impounded vehicle, or to both.

[11] The appellant insisted at various instances in his evidence that the impounded vehicle had been released to Ms Sidat but, ultimately, had to concede that he had no direct evidence of this fact. He further testified that he was being targeted because he was the investigator in this matter, a proposition that was never put to Ms Sidat or Mr Mohamed. Then, the appellant testified that while there was no bad blood between him and Col Els, the colonel had allegedly said when announcing his imminent retirement from the SAPS, that prior to retirement, he wanted to see that one of the members of the SAPS ‘was in orange overalls’. This was a reference to the colour overalls that convicted persons wear in prison. This was never put to Col Els, but the appellant insisted that the colonel was falsely implicating him in this

matter. He agreed that he had not instructed his legal representative that this was the case.

[12] The defence called the evidence of a Captain Elliot Zuma, who is stationed at the SAPS pound in Isipingo. He explained the ultimate fate of the impounded vehicle. He testified that Ms Sidat had approached him with a court order to have the impounded vehicle released to her, but he ascertained that the impounded vehicle had been forfeited to the State. When that is done, so he explained, the motor vehicle is destroyed by being crushed. That is what happened in this instance. The impounded vehicle could not therefore be released to Mrs Sidat.

[13] The regional magistrate considered all this evidence in her judgment. She found the State witnesses to be excellent witnesses. The trial court found Ms Sidat and Mr Mahomed to be 'uneducated', which is perhaps a bit harsh when it comes to Mr Mahomed, but found their evidence to be reliable. It seems to me that these are not people who would have the time, or the inclination, to engage in a conspiracy to falsely incriminate the appellant. They are ordinary, hardworking members of the community who try to follow the correct procedures. That is what Ms Sidat was doing when trying to get a SAPS clearance for her vehicle. She believed that making the payment was entirely regular and was part of the ordinary system of obtaining the necessary clearance on the impounded vehicle. This is reflected in the fact that her initial complaint to Col Els had nothing to do with the payment she had been required to make – it had to do with the wheels, tyres, and radio being missing from the impounded vehicle. Ms Sidat did not appear to be a worldly person nor did she come across as a person who could easily afford the R4 000.

[14] The regional magistrate's finding on the merits of the State witnesses, excluding Col Els, was attacked in argument by Mr Edwards, who appeared for the appellant. He submitted that both Ms Sidat and Mr Mahomed knew full well that they were paying a bribe to the appellant and that their evidence should therefore have been approached with caution. I cannot share that view. Firstly, there was no evidence whatsoever that Ms Sidat appreciated this to be the case. There may be a suggestion that Mr Mahomed appreciated that the payment was required to improperly grease the wheels of the SAPS bureaucracy but this issue was never

explored at all during the trial. Secondly, I am not sure that this argument redounds to the appellant's benefit, for it has as its basic premise that what was occurring was a two-sided criminal transaction, with the payer of the bribe on the one side and the recipient of the bribe on the other side. In this scenario, the recipient was the appellant. For the argument to be valid, both sides of the transaction must be present on the facts of this matter. It follows that if that argument is accepted, the appellant has to be viewed as having improperly received the money and that then is the end of the appeal.

[15] I do not accept that the regional magistrate erred in her assessment of the credibility of Ms Sidat and Mr Mahomed as witnesses. As was said by Nestadt JA in *S v Mkohle*:²

'It need hardly be stressed that where a trial Court's findings on credibility are in issue on appeal, as in this matter, then, unless there has been a misdirection on fact, the presumption is that the conclusion is correct; the appellate Court will only reverse it if convinced that it is wrong. In my opinion the Court *a quo* did not misdirect itself.'

I remain unpersuaded that there was any such misdirection.

[16] Mr Edwards also highlighted the central issue in the array of facts presented to the trial court as being the handing over of the payment of R4 000. He submitted that there was a contradiction between the evidence of Ms Sidat and Mr Mahomed in this regard. That contradiction related to whether the R4 000 was contained within an envelope or not. Mr Edwards submitted that this difference struck at the very heart of the matter and was advanced with some brio by him. However, Ms Sidat made no mention in her evidence of an envelope. The envelope was only mentioned by Mr Mahomed in the following circumstances while he was being cross-examined:

'And was it open cash notes or was it in an envelope or a packet or what was ... [incomplete] --- I think it was either in an envelope or – I think it was an envelope at the time.

² *S v Mkohle* 1990 (1) SACR 95 (A) at 100e-f.

COURT Do you know, do you remember, or are you just assuming? --- I'm assuming, it was some time back.'

There was thus no contradiction between the evidence of the two principle witnesses who testified about the payment of the money. And Mr Mahomed himself was by no means certain that the money was, indeed, contained in an envelope.

[17] The appellant had the difficult task at trial of coming up with an explanation for the receipt by him of the R4 000 in R100 banknotes. The approach that he took, as previously mentioned, was to deny that it had ever been paid to him. As to why he would unfairly be made the scapegoat for what occurred, the appellant came up with two possibilities. The first was that Ms Sidat and Mr Mahomed blamed him for the missing wheels, tyres, and radio. The second was that Col Els wanted to put a policeman in prison by the time that he retired. If this was what had happened, it would follow that Col Els would have had to have solicited Ms Sidat's involvement in his plan, for it was never disputed that Ms Sidat had told Col Els that she had paid the R4 000 to the appellant. Neither of these propositions was put to the witnesses who would have an interest in commenting upon them. It is highly unrealistic for the appellant to believe that the court a quo ought to have accepted the truth of what he claimed when none of the witnesses had been told of the appellant's theories and asked for their views on them. The appellant's contentions were correctly rejected by the regional magistrate.

[18] The ability of an appeal court to interfere with the findings of a lower court are limited. As was held in *S v Francis*:³

'In the absence of any misdirection the trial Court's conclusion, including its acceptance of a witness' evidence, is presumed to be correct. In order to succeed on appeal, the appellant must therefore convince the Court of appeal on adequate grounds that the trial Court was wrong in accepting the witness' evidence - a reasonable doubt will not suffice to justify interference with its findings. Bearing in

³ *S v Francis* 1991 (1) SACR 198 (A) at 198j-199a in the headnote.

mind the advantage which a trial Court has of seeing, hearing and appraising a witness, it is only in exceptional cases that the Court of appeal will be entitled to interfere with a trial court's evaluation of oral testimony.'

I am unable to identify any misdirections made by the regional magistrate and her judgment and conclusion appears to me to be sound.

[19] The appeal cannot therefore succeed. I would propose that it be dismissed.

MOSSOP J

I agree and it is so ordered

BALTON J

APPEARANCES

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