



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY: JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM: The Registrar, Supreme Court of Appeal

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STATUS: Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Tiry and Others v The State (52/2018 and 149/2018) [2020] ZASCA 137 (29 October 2020)

Today, the Supreme Court of Appeal (the SCA) upheld in part appeals against convictions and sentences brought by the appellants, against a judgment of the Free State Division of the High Court, Bloemfontein.

The appellants' convictions and sentences to lengthy terms of imprisonment arose from the operation of two tank farms for the receipt and storage of stolen petroleum products and the sale of the stolen product to the retail market and end users. The tank farms were established by the first appellant, Mr Tiry, who was the kingpin of the entire unlawful operation. Arising out of the operations of these two tank farms, he and his partner, the second appellant, Ms Sangweni, were both charged on count 1 with managing an enterprise conducted through a pattern of racketeering activities in terms of s 2(1)(f) of the Prevention of Crime Act 121 of 1998 (POCA). Together with the remaining appellants they were also charged on count 2 with conducting or participating in an enterprise conducted through a pattern of racketeering activities in terms of s 2(1)(e) of POCA. In addition, Mr Tiry and Ms Sangweni were charged with 43 separate counts of theft of petroleum products arising from their acquisition of the petroleum products. The remaining appellants were charged with theft in respect of those transactions with which they were involved.

Appellant 1, Mr Tiry, was convicted on count 1 and sentenced to 30 years imprisonment. Appellant 2, Ms Sangweni, was acquitted on count 1 but convicted on count 2 and sentenced to 18 years imprisonment. Mr Tiry and appellants 3, 4, 5, 6, 7, 8 and 9 were convicted on count 2. Mr Tiry was sentenced to 20 years imprisonment and each of the others to 15 years imprisonment. In the case of Mr Tiry this was to be served concurrently with his sentence on count 1. Appellants 1 and 2 were convicted of theft on counts 3 to 26 and 30 to 45 and sentenced to 15 years imprisonment on each count to run concurrently with their sentences on count 1 and 2 respectively. Each of appellants 3, 4, 5, 6, 7, 8 and 9 was convicted of various counts of theft and sentenced to 15 years imprisonment on each count, to run concurrently with their sentences on count 2. The effect of the sentences imposed was the following: in the case of Mr Tiry an effective sentence of 30 years imprisonment; in the case of Ms Sangweni an effective sentence of 18 years imprisonment; and in the case of each of the remaining appellants an effective sentence of 15 years imprisonment.

The convictions were assailed on the grounds of violations of fair trial rights based on the following: a denial of the opportunity to cross-examine witnesses and the limitation of an expert witness' evidence; acceptance of hearsay evidence in the form of the satellite vehicle tracking reports; the trial judge's conduct; invalidity of the search and seizure warrant in respect of one of the farms.

The SCA considered these complaints and dismissed each one of them. The court then considered the individual charges and found that in some of them, the trial court had erred in convicting the appellants as there was insufficient evidence.

The court then considered the POCA charges in terms of sections 2(1)(e) and 2(1)(f), on which counts 1 and 2 are based. After a detailed analysis of the interface between the two sections, the court considered whether charging and convicting someone of both offences does not involve an impermissible splitting of charges. In this regard the court expressed doubt on the correctness of the majority decision in *S v Prinsloo and Others* [2015] ZASCA 207; 2016 (2) SACR 25 (SCA), and supported the approach of the minority decision in that case.

With regard to sentence, the court reduced Mr Tiry's effective sentence of 30 years' imprisonment to 20 years, and Ms Sangweni's 18 years' imprisonment to 12 years. The rest of the appellants' sentence were reduced to an effective seven years' imprisonment.

* END *