



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

### MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**From:** The Registrar, Supreme Court of Appeal

**Date:** 16 October 2024

**Status:** Immediate

***The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal***

*Seshin Naraidu v The State (894/2023) [2024] ZASCA 139 (16 October 2024)*

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Today the Supreme Court of Appeal (SCA) upheld an appeal from the Gauteng Division of the High Court, Johannesburg (the high court).

The appellant, Mr Naraidu, a tax practitioner, was, together with two other accused, charged with three counts of fraud, and three alternative charges under the Value-Added Tax Act 89 of 1991 (the VAT Act) read with s 269(9) of the Tax Administration Act 28 of 2011 (the TAA). The charges, in essence, alleged that Serghony's Shoes Fashion CC (SSF and the first accused), together with its sole member, Mr Mbom (the second accused) and Mr Naraidu (the third accused) unlawfully, and with intent to defraud, misrepresented to the South African Revenue Service (SARS) that SSF was entitled to refunds under the VAT Act, knowing that SSF was not so entitled and that the information submitted to SARS was false.

In the Regional Court, Gauteng (the regional court), Mr Mbom and Mr Naraidu were found guilty on the three counts of fraud, with Mr Naraidu being sentenced to six years of imprisonment, without the option of a fine. After appealing to the high court in terms of his conviction, the high court dismissed Mr Naraidu's appeal, holding that the regional court had correctly found that Mr Naraidu was aware that the documents submitted to SARS supporting the claim for the VAT refund were false.

The issue before the SCA was whether Mr Naraidu was complicit in Mr Mbom's fraudulent scheme to use SSF to make fraudulent claims upon SARS for a VAT refund.

In coming to its conclusion, the SCA pointed out that, upon scrutinising the emails that Mr Naraidu sent to SARS, two matters were clear. First, that Mr Naraidu had resubmitted the documents to SARS supporting the claim by SSF for a VAT refund, and, hence, had sight of these documents. Second, that, in order to do so, Mr Naraidu must have had access to the SARS e-filing system, since he recorded that he had resubmitted the documents. The SCA went on to state that, even though there was a great deal that was unsatisfactory about Mr Naraidu's evidence, indicating a reckless disregard for his duties as a tax practitioner, the question of whether he made himself party to the fraud that Mr Mbom perpetrated upon SARS had to be answered in the negative because there was an absence of proof, beyond reasonable doubt, that he knew the claim made upon SARS to be fraudulent. In the result, his conviction on the charges of common law fraud was thus unsafe and fell to be set aside.

With regards to the alternative statutory charges, the SCA held that these charges entailed some complexity because s 59 of the VAT Act was repealed by s 271 of the TAA and it was doubtful that these statutory charges are valid in law because the TAA commenced on 1 October 2012 and the statutory offences with which Mr Naraidu was charged are alleged to have occurred in 2013 and 2014. In any event, the SCA, held that while Mr Naraidu sought to secure a refund for SFF, the State did not discharge its onus to prove that he intended to do so knowing that SFF was not entitled to the refund and thus, could not be convicted on the alternative statutory charges.

In the result, the appeal succeeded; the orders of the high court and the regional court were set aside; and Mr Naraidu was acquitted of the charges against him.

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