REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NUMBER: SS 43/2012
APPEAL: A 133/2017

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO
06/02/2023

DATE SIGNATURE

In the matter of:

DITLHAKANYANE ISAAC TEBOGO	**FIRST APPELLANT**
MOTAUNG THABANG SAMSON	**SECOND APPELLANT**
MKHWANE HOLYNSWORTH	**THIRD APPELLANT**
MKHWANE KEDIBONE SYLVIA	**FOURTH APPELLANT**
KUNENE LAURA	**FIFTH APPELLANT**
MCENCE VUYOKAZI	**SIXTH APPELLANT**
KEKANA JACK	**SEVENTH APPELLANT**
MOLEFE KARABO	**EIGHTH APPELLANT**
MAKENETE THABO BRADLEY	**NINTH APPELLANT**

Versus

THE STATE	**RESPONDENT**

JUDGMENT

OOSTHUIZEN-SENEKAL CSP AJ: (Concurring MOOSA J and JORDAAN AJ)

INTRODUCTION

[1] This is a Full Court Appeal by the first, third, fourth, fifth, sixth, seventh, eighth and ninth appellants against their convictions and sentences, as well as an appeal by the second appellant against the sentence imposed.

[2] The appellants were arraigned in the Gauteng Division of the High Court, Johannesburg, on a plethora of charges that included racketeering, money laundering, fraud, theft, forgery and attempting to escape.

[3] The trial was a lengthy and drawn-out affair and which proceeded intermittently until judgment was delivered on 18 June 2015, resulting in the appellants being convicted on various charges.

[4] The trial involved, *inter alia*, the admission of hearsay evidence, various interlocutory applications (trials within trials) in respect of statements made by the second, sixth and seventh appellants. Furthermore, at the end of the State's case, the appellants applied for their discharge in terms of section 174 of the Criminal Procedure Act, Act 51 of 1977 (CPA), which applications were refused.

[5] On 24 June 2015, the appellants were sentenced to lengthy terms of imprisonment.

[6] Aggrieved by the outcome of the trial, the appellants applied for leave to appeal on both conviction and sentence. After hearing arguments, the court *a quo* granted the application for leave to appeal against conviction and sentence.

[7] The common grounds for the appeal can be condensed as follows: that the court *a quo*-

(a) Erred in finding that based on the circumstantial evidence, relating to cell phone communications between the appellants, the only inference to be drawn and which is consistent with the proven facts, was that the appellants were involved in the commissioning of the crimes.

(b) Erred in accepting the statements made by the second and seventh appellants as evidence, because, so they argued, the statements were obtained in violation of their Constitutional rights and therefore, should not have been accepted as evidence during the State's case.

(c) Erred in accepting the evidence of the Section 204[1] witness, Mr Motsoane, an accomplice.

[8] With regard to the sentences, the appellants argued that the sentences imposed are shockingly inappropriate and disproportionate to the offences. It

[1] Criminal Procedure Act 51 of 1977. Section 204 reads as follows:

(1) Whenever the prosecutor at criminal proceedings informs the court that any person called as a witness on behalf of the prosecution will be required by the prosecution to answer questions which may incriminate such witness with regard to an offence specified by the prosecutor -

(a) the court, if satisfied that such witness is otherwise a competent witness for the prosecution, shall inform such witness -

(i) that he is obliged to give evidence at the proceedings in question;

(ii) that questions may be put to him which may incriminate him with regard to the offence specified by the prosecutor;

(iii) that he will be obliged to answer any question put to him, whether by the prosecution, the accused or the court notwithstanding that the answer may incriminate him with regard to the offence so specified or with regard to any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offence so specified;

(iv) that if he answers frankly and honestly all questions put to him, he shall be discharged from prosecution with regard to the offence so specified and with regard to any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offence so specified; and

(b) such witness shall thereupon give evidence and answer any question put to him, whether by the prosecution, the accused or the court, notwithstanding that the reply thereto may incriminate him with regard to the offence so specified by the prosecutor or with regard to any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offence so specified.

(2) If a witness referred to in subsection (1), in the opinion of the court, answers frankly and honestly all questions put to him-

(a) such witness shall, subject to the provisions of subsection (3), be discharged from prosecution for the offence so specified by the prosecutor and for any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offence so specified; and (b) the court shall cause such discharge to be entered on the record of the proceedings in question.

was argued that the terms of imprisonment imposed by the court *a quo* induces a sense of shock in the circumstances.

[9] The record of the trial proceedings is voluminous and consists of 80 (eighty) bundles. Numerous exhibits were handed in during the trial. Many witnesses gave evidence in this matter. Due to the vast amount of evidence presented on the 124 (one hundred and twenty-four) charges levelled against the appellants, I will mainly focus on the grounds of appeal raised by the appellants.

[10] The court *a quo*, gave a comprehensive judgment wherein it meticulously and painstakingly evaluated all the evidence that was presented during the trial.

BACKGROUND AND METHOD OF OPERATING A CRIMINAL ENTERPRISE

[11] This matter concerns the criminal abuse of the South African Post Bank. The following *modus operandi* was followed in the commission of the crimes:

(a) A Post Office Bank account would be identified by "agents" (Post Office employees) as credited in sufficient funds to make it financially worthwhile to steal therefrom. Identification of the account would be done by corrupted Post Bank employees.

(b) The information would be forwarded to the provincial ringleader. The ringleader would then procure various documents, namely forged identification documents - either a South African identity book or a passport (Lesotho, Mozambique or Nigeria). The ringleader would also co-opt a person ("striker" or "runner") who was prepared to falsely claim to be the accountholder of the targeted account and such person would draw money therefrom.

(c) An accountholder seeking to make a withdrawal is required to produce either a post office card or a post office book. The criminals would not be in possession of either of these items and accordingly the "runner" would approach a Post Office teller to apply for a replacement Post Office banking book or card. Written application would be made with the "runner" producing

the forged identity document. A card or book would be issued to the intending thief/"runner".

(d) A few hours or days after the replacement card of bank book are issued, the "runner" would produce a withdrawal slip at certain branches of the Post Office to withdraw the monies required by the ringleaders. The withdrawal slip would be accompanied by either a fake identity book or passport and the newly acquired fake bank book or bank card (or an application for a replacement book or card).

(e) In some cases, a Post Office bank account did not exist and yet it was created in the name of a "real" person. This was done with a fake identity document which the "runner" will present at the Post Bank in order to apply for an account to be opened. The purpose of opening a "fake" account, was to procure the deposit of funds (for example pension pay outs) into the "fake" account so that the monies could be withdrawn after the transactions are completed.[2]

(f) Names and identity numbers of people will be obtained in newspapers, in the section of death notices. Identity photos will be sourced from kiosks that provide such photos to clients.

[12] The criminal enterprise involved the following;

(a) The creation of false identity documents so that persons could pretend to be Post Bank account holders on genuine accounts;

(b) Presentation of false documents and imposters to the Post Office Bank with demands for monies from genuine accounts;

(c) Deposits of cash into both fake and genuine accounts so that tellers would have sufficient funds to pay out the fraudulent withdrawals;

[2] Satchwell J Judgment, para 4.

(d) Recruitment of staff employed by the Post Office Bank to identify creditworthy accounts and to enable and process fraudulent withdrawals of monies;

(e) Creation of false bank accounts from which withdrawals were made;

(f) Liaison amongst professional criminals and Post Office Bank employees and other members of the public in furtherance of the criminal enterprise.

EVIDENCE PRESENTED BY THE STATE

POST BANK ACCOUNT HOLDERS

[13] The state called 19 account holders[3] and 4 "alleged" account holders[4] to testify during the trial. Their evidence pertains to the fact that they opened South African Post Office ("SAPO") bank accounts. The said accounts were utilised either by using a bank card or bank book. They all testified that they never applied for replacement bank cards. The account holders further stated that they did not complete or sign the withdrawal slips handed to them during their testimony. They confirmed that they did not receive the funds indicated on the withdrawal slips, neither did they authorise any person to process the withdrawals on their behalf.

[3] Meriam Nkuna (counts 30 and 31), Joseph Mali (counts 32 and 33), Maqadini Radebe (counts 34 to 36), Andries Venter (counts 37 and 38), Mshukumisi Godloza (counts 39 and 40), Sipho Sibeko (counts 41 and 42), Paul Mahangule (counts 43 and 44), Ntutulezi Jongwana (counts 45 and 46), Herman Motale (counts 47 and 48), Anna Viljoen (counts 49 and 50), Novusumunzi Vellem (counts 51 and 54), Panic Mashile (counts 55, 56 and 57), Paepae Mabula (counts 58 to 60), Clinton Peterson (counts 61, 62 and 63), Mukheri Ndlovu (counts 64, 65, 66), Lefa Mofokeng (counts 70, 71, 72), Isaac Mthumayelo Mfukuli (counts 73 and 74), Tshediso Tseuoa (counts 79, 80, 81), Paul Ndlovu (counts 82, 83 and 84), and Maqadini Radebe (count 95).

[4] Matombi Ntuli (counts 12 and 13), Bongani Ntuli (counts 10 and 11), John Ntuli (counts 10 and 11), lan Nainkin (counts 14 and 15), Mahlubandile Mrubata (counts 6-9), died in 2006 and could not have opened the account in her name on which withdrawals were made, and Lydia Mabasi Rasoeu (counts 3 - 5), from Lesotho, was in Lesotho at the time an account was opened in her name at Hillbrow Post Office.

[14] The witnesses confirmed that the documentation presented to them during their testimony, by the State, were used by unknown persons during fraudulent transactions on their bank accounts. Evident from the evidence was the fact that details completed on the withdrawal slips were incorrect and misspelled.

[15] The court *a quo* found the evidence presented by the account holders to be satisfactory and therefore accepted the evidence that the withdrawals and activities on their respective Post Bank accounts, on the dates indicated on the indictment, involved the use of forged documents and as such, the transactions were made fraudulently and as a result, the monies were stolen from the account holders.

[16] During the trial the State applied to lead hearsay evidence in the form of sworn affidavits relating to account holders not able to testify in Court during the proceedings. Sworn affidavits by Davison Nkomo,[5] Masechaba Mafatle,[6] Mphephu Maringa[7] and Norman Sikhosana, were allowed following a written ruling by the court *a quo* finding that the hearsay evidence pertaining to the said statements was admissible. The ruling was based, amongst other reasons, on the fact that the evidence pertaining to the statements was not in dispute.

[17] Mr Kasirivu, originated from Uganda. He, also deposed of a sworn statement relating to unlawful activities on his Post Bank account. However, he was reluctant to give evidence in Court and disappeared. The State was unable to call Mr Kasirivu and his statement was allowed and accepted as an exhibit. Mr Kasirivu's statement pertained to the fact that on 20 May 2011, a re-issue of his bank card was attempted at Hillbrow Post Office. On 1 June 2011, a second attempt was made at Pinegowrie Post Office. Due to the two failed attempts for

[5] Liwani Burial Society/Davison Nkomo (counts 75 and 76).

[6] Ms. Mafatle was from Lesotho and could not be traced to testify. However, during the investigation of the matter, she handed a written sworn statement to Warrant Officer Zondi at Johannesburg Central Police Station regarding the incident.

[7] Mrs Mphephu Maringa died on 3 June 2013. Before her death, she and her son met with Mr Manamela, employed at the South African Post Office. With the assistance of her son, she deposed of a sworn statement regarding the incident.

the re-issue of the bank card, queries were raised and the account was closed by Mr Kasirivu on 6 June 2011.

[18] Following the evidence of the account holders as well as the evidence contained in the sworn statements, the court *a quo* stated the following at paragraph [23] of the judgment:

> *"Accordingly, I shall not deal further in this judgment with the details of the evidence of each accountholder, as to their uncontested averments and denials of any involvement in the transactions which form the gravamen of this indictment. Their evidence was not challenged in any serious respect."*

POST BANK EMPLOYEES

[19] A number of Post Bank employees[8] testified regarding the procedures to be followed when processing the re-issues of Post Bank books or cards and the procedures to be followed when withdrawals are made.

[20] The process can be set out as follows:

(a) When a bank account was opened, all documents were sent to Head Office, Bloemfontein, for registration purposes.

(b) Bank affairs were operated by the same tellers selling stamps.

(c) A bank teller commences to work on the bank system by signing in on the system with his or her teller number and password. The system recognizes which teller signed in and the said teller would then be able to process withdrawals on bank accounts as requested by clients.

(d) An electronic drawer containing cash was allocated to each teller. If there was insufficient cash in the drawer for a transaction, the teller would request funds from a supervisor or branch manager.

[8] Mrs Lottering, Mocheko, Majozi, Van der Merwe, Mr Van Rensburg, Swanepoel, Lang, Barnard, Matthee, Lombard and Naidoo.

(e) Where there was an excess of cash in the drawer at the end of the day, the cash would be handed to the branch manager, who would deposit the cash at Standard Bank. This would be done daily.

(f) Where a client presented an identity book to the teller, the teller had to compare the names and surnames on the documents, he also had to scan the identity document. The duty lies with the teller to verify the legitimacy of the documents presented by the client. Although the bank card does not reflect the customer's name, the account number on the bank system will reflect the name of the customer. The details on the identity document and the bank system had to be checked and verified by the teller.

(g) Tellers were not allowed to accept photocopies of identity documents.

(h) A pin number was required for using the bank card.

(i) The scanning process for verification of the documents, was not linked to Home Affairs, nor to Head Office, Bloemfontein.

(j) The Post Bank system was not equipped to record signatures - either on bank cards or books. Incorrect details could be stored on the bank system, because the correctness of the information depends on teller capturing names and details correctly.

(k) Tellers had to keep copies of identity documents and withdrawals slips processed daily.

(l) A mini-statement had to be drawn when a bank book was reported lost or when an amount in excess of R3,000.00 (three thousand rand) was withdrawn.

(m) The teller must ask the client for an address, balance and details of the last three transactions - as the information had to be compared with the information appearing on the mini-statement.

(n) Authorisation for withdrawals of amounts in excess of R 20,000.00 (twenty thousand rand) should be obtained from Post Bank, Bloemfontein, by the teller processing the withdrawal request.

[21] Post Bank tellers became suspicious of procedures not being followed at certain Post Office branches. For purposes of this judgment, the following witnesses' evidence must be mentioned. Regarding count 32 and 33, Mr Alfred Mocheku testified that Mr Mali (account holder) was a regular customer. He testified that the eighth appellant would inform tellers, beforehand, that Mr Mali was on his way to make withdrawals, he would also inform them the amount of the withdrawals to be processed, the withdrawals were always below R 20,000.00 (twenty thousand rand). The witness testified that the eighth appellant informed them that Mr Mali required the monies for a funeral. Mr Mocheku stated that the reason tendered by the eighth appellant why the withdrawals were below R 20,000.00 (twenty thousand rand) was in order for Post Bank not to "hassle" Mr Mali.

[22] Mr Mocheku testified that Mr Mali was given preference over other customers and that funds were earmarked for him. He testified that he was not satisfied with the identity document presented by Mr Mali during the withdrawals, because it looked false. He testified that he noticed that the customer requesting the withdrawals appeared younger than the date of birth indicated on the identity document. Mr Mocheku reported his concerns in this regard to the eighth appellant, who dismissed it. The witness testified that Mr Mali presented no withdrawal slips for the transactions. He told the court that the eighth appellant insisted that the withdrawals be processed by subordinate tellers.

[23] Mr Mocheku stated that he, together with other tellers, contacted Post Bank Bloemfontein and informed them about the concerns they had. However, Post Bank Bloemfontein took the view that nothing could be done if the customer presented his identity book and the Bank card at the time of the withdrawals.

[24] Mr Napoleon Majozi testified that he processed a withdrawal for a supposed accountholder named Radebe. During the transaction, he recognized the photograph on the identity document presented. He and another teller, Desire Ngobeni, went through documents recording old transactions and they found that the photograph on the Radebe identity document was the same photograph on the Mali identity document previously used to do withdrawals. They informed the Post Office Investigator, Van der Merwe, of their findings, who confirmed their suspicions.

[25] Furthermore, Mr Majozi testified that he had insufficient funds in his cash drawer to process the desired withdrawal of R 10,000.00 (ten thousand rand). This was referred to the eighth appellant, who told the client to wait in order for sufficient funds to be generated. After waiting a few minutes, Radebe, the client, received a phone call and after the said phone call, he changed amount of the withdrawal to an amount of R18,000.00 (eighteen thousand rand). Majozi again informed the eighth appellant that he was displeased in processing the withdrawal. Whereafter, the eighth appellant instructed him to proceed with the transaction. The witness testified that the eighth appellant did not authorize the transaction as required but he excused himself, informing them that he had a stomach problem. Ms Desire Ngobeni was then instructed to authorize the withdrawal.

[26] Ms Karabo Desire Ngobeni testified and confirmed the evidence of Mr Majozi.

EVIDENCE BY DAVID MOTSOANE – ACCOMPLICE

[27] Mr. Motsoane (“Motsoane”) was warned as a witness in terms of section 204 of the CPA on certain specified offences, namely theft, fraud, money laundering and managing a POCA enterprise. He was serving an effective sentence of ten years imprisonment after pleading guilty in the Pretoria Commercial Crimes Court on offences relating to what he described as the “Post Bank Heist of R 42 million”.

[28] Motsoane testified that during 2009, he resided in Welkom. At the end of 2009, he met a person named Ernest, who enquired about a “contact” employed at

the Bloemfontein Post Bank. Following the discussion, the witness, Ernest and Charles, travelled to Johannesburg, where they met the first appellant ("Isaac"). Isaac was looking for an "agent" employed at the Post Office and who would be tasked to gather details of account holders. The details needed to conduct their criminal activities were: names, surnames, account numbers, balances on the accounts, details of three deposits and three withdrawals and lastly, the addresses of the account holders.

[29] Motsoane further testified that Isaac indicated that he had previous experience and "agents" relating to the inner workings of the scheme and that he, Isaac, was tasked to provide fraudulent documents needed to make withdrawals from the targeted accounts. It was agreed that Motsoane would provide Isaac with names and contacts of "agents".

[30] Ayakha was a friend of Motsoane and he was employed at the Post Office. Ayakha introduced Motsoane to Joyce and Harry, who in turn introduced him to Mbuselo Mathews ("Mbuselo").

[31] In January 2010, Motsoane met Mbuselo in Bloemfontein and following discussion, Mbuselo, over a period of time, provided Motsoane with proximately 20 account details with balances ranging between R100,000.00 (one hundred thousand rand) to R300,000.00 (three hundred thousand rand). Communication between them was through specially arranged cell phones and sim cards. The information was sent to Isaac, who in turn kept Motsoane informed of the withdrawals on the accounts.

[32] Ms Sana Hlapane ("Hlapane") was approached by Motsoane and Ayakha. After discussions, Hlapane agreed that her bank account could be used for deposits and withdrawals.

[33] Motsoane recalled an incident where he provided account details to Isaac, and a few days later, Mbuselo informed Motsoane that a withdrawal of R50,000.00 (fifty thousand rand) was made on the account. Motsoane travelled to Johannesburg where he confronted Isaac and Ernest regarding the withdrawal and that he did not receive his share of the money. As a result, Motsoane

obtained a fake identity document on one of the accounts, the Motale account, which he previously provided to Isaac. Motsoane then proceeded in making a withdrawal of R5,000.00 (five thousand rand) on the account at Pansig Post Office in Bloemfontein. This led to disagreements between Motsoane and Isaac.

[34] The witness testified that he again made a withdrawal at Pansig Post Office on another account in the amount of R20,000.00 (twenty thousand rand). This was done after he arranged a false replacement card on the account. As a result, Isaac became aware of independent activities on accounts by Motsoane and their relationship started to deteriorate.

[35] Whilst in Johannesburg, Motsoane and Isaac made further withdrawals on the Motale account at Rosettenville. The sequence of activities and withdrawals made on the Motale account was: Pansig, Pretoria, Johannesburg and Gardenview Post Offices.

[36] Motsoane stated that he approached Joyce, whom he was working with and she provided him with the account details of an account with a balance of R100,000.00 (one hundred thousand rand). The information was forwarded to Isaac via SMS. A person named Solly wanted to protect Joyce's interests and they all met with Isaac in Johannesburg. After some discussion, they proceed to Vanderbijlpark Post Office where Isaac made withdrawal of R15/20,000.00 (fifteen/twenty thousand rand) after which Isaac handed R5/800.00 (five/eight thousand rand) over to Motsoane to share amongst him, Joyce and Solly.

[37] The following day, they all travelled to Ridgway Post Office where Isaac made a withdrawal after which he again handed R15,000.00 (fifteen thousand rand) to Motsoane to share amongst them.

[38] After Mbuselo quit, Motsoane recruited Boy Thekiso as an "agent". Boy Thekiso was employed at the Post Office. Thekiso was arrested and he pleaded guilty to charges preferred against him, and was sentenced to imprisonment.

[39] Motsoane testified that he recruited a person named Fusi, who provided him with the details of account holders and the information was forwarded to Isaac. Isaac prepared the identity documents on the account details. Motsoane and Fusi travelled to Johannesburg where they met Isaac at Southgate. Fusi was in possession of a bank card and the PIN number of the account. Fusi withdrew a R1,000.00 (one thousand rand) from the account at the ATM. Thereafter, Isaac arranged a withdrawal in the amount of R40,000.00 (forty thousand rand) at the Southgate Post Office. Half of the money was handed over to Motsoane and Fusi as their share.

[40] Fusi was arrested at the Pinegowrie Post Office when he pretended to be Mr PM Ndlovu and attempted to make a withdrawal on the account. Fusi pleaded guilty on the charges against him and he was sentenced.

[41] The witness explained how the false documents would be obtained. He stated that Isaac forged the identity documents and he would pay Isaac R1,000.00 (one thousand rand) per document. He testified that he later learned how to forge documents and began forging documents for his own use.

[42] He explained that software was used to change names, dates of issue, country of issue, on identity documents. Photographs were obtained from photographers or others were stolen. They would manufacture green identity books or false information and the photos were pasted in old identity books. Photocopies of identity documents were used, or photographs of missing or deceased persons found in newspapers were used. The quality of photocopies was poor and this was done so that the teller at the bank would be “covered” if found out.

[43] Tellers in the know were recruited at various branches of the Post Office because the forgeries were often deliberately prepared to be obscure and darkened. This was necessary for the tellers not to ask questions to the customers or the signatures. The tellers would blatantly ignore errors on the documents.

[44] Motsoane testified that he communicated with Isaac via his cell phone. He recalled a MTN number which was RICA'd in his name. Isaac communicated on different cell numbers but he mainly used cell phone number, 076 […].

[45] The witness stated that where large withdrawals were involved, the money was booked in advance by phoning the Post Bank. The teller's employee reference number would be obtained and then they would phone the Post Bank call centre presenting the teller's numbers and asking to confirm the client's account and that funds should be available.

[46] At times, it was necessary to generate funds, because a teller would have insufficient money in a cash drawer. Motsoane, Isaac and 'whoever was in the group" would make deposits so as to "top up" the cash at that branch. The teller would then be able to make the withdrawal and afterwards the syndicate members would recover their funds from the accounts by making withdrawals in the amounts previously deposited.

[47] Motsoane testified that his association with Isaac ended in May 2011.

[48] In summary, Motsoane, during his testimony, made specific reference to the following accounts and withdrawals:

(a) Solly Mashile: withdrawals in Johannesburg,

(b) iMfukudu from Peddie,

(c) Mahangule account,

(d) The only date of a transaction which he recalled was made when SA was playing France. "*That is one I can recall because there was an event on that particular day. On others, I cannot remember anything. That is when we are in Vanderbijlpark Post Office",*

(e) Regarding a transaction at Ridgeway Post Office, Motsoane assumed that R30,000.00 (thirty thousand rand) was withdrawn. He stated that: *"because of*

money he gave me - I got R15,000.00". As to Vanderbijl, Motsoane assumed the amount withdrawn was in the range of R20,000.00 to R30,000.00 (twenty to thirty thousand rand) – "*I think I got in range of R 15 000*".

(f) On the PM Ndlovu account, the person on the photograph of the identity document was Fusi; Motsoane met with Isaac regarding this account and he introduced Fusi to Isaac.

TARGETING OF ACCOUNTS

[49] Satchwell J stated the following;

> "[*58] Even if there had been no evidence from Motsoane, it would have been easily apparent on the evidence presented that there was both a group operating as a that were targeting Post Bank accounts so as to deplete them. [sic]*
>
> *[59] The attacks on the Post Bank accounts were like guerrilla raids in a military operation: well organized, in and out in a few days, multiple transactions as often as possible. This makes absolute sense - the window of opportunity was only as long as it took for the accountholder to discover what had been done, report this to the Post Office and close down or block the account.*
>
> *[60] The compilation of documentary evidence from a variety of sources (the post Bank computer and documentary records, cell phone records) all indicate the frenzy of cell phone activity between persons involved in targeting the accounts, the physical mobility required in emptying those accounts, the replication of modus operandi in effecting fake issues or fraudulent withdrawals." [my emphasis]*

[50] The court *a quo* proceeded in its judgment and with clarity and precision, set out the accounts that were plundered, the dates of withdrawals, the Post Offices where the withdrawals were made and the persistent cell phone contact between the appellants before and after the withdrawals were done.[9] For purposes of this judgment, I do not deem it necessary to the repeat the in-depth analysis by the court *a quo,* for sake of brevity and to avail unnecessary prolix.

[9] See para 61- 62.

CELL PHONE DATA

[51] The phone numbers and handsets utilized by the second to ninth appellants were not in dispute. Admissions in terms of section 220 of the CPA were noted at the commencement of the trial, which included the chain evidence pertaining to the handling of the exhibits, where applicable. The following admissions were recorded:

(a) The second appellant admitted he was the owner of three cell phones (Nokia E90, Samsung C6625 and HTC) seized from him on the day of his arrest. Furthermore, he used cell phone numbers: 083 […] and 084 [….].

(b) The third appellant admitted that he was the owner of an LG cell phone seized on the day of his arrest. He used cell number 083 […]. He also admitted the correctness of cell phone data and tower locations extracted from the systems of MTN relating to his cell phone number.

(c) The fourth appellant admitted that she was the owner of two cell phones, namely a Samsung E250 and a Nokia 2700. She admitted that the cell phones were seized on the day of her arrest. She further admitted that she used cell phone numbers 083 […] and 084[…]. She also admitted the correctness of cell phone data and tower locations extracted relating to her cell phones.

(d) The sixth appellant admitted that she was the owner of Vodafone and Nokia 2730 seized on the day of her arrest. She admitted that she used cell phone number 082[….]. She also admitted the correctness of the cell phone data and tower location relating to her cell phones. It was also admitted that the data downloaded from the Nokia 2730 was done accurately and correctly reflects the contents of her phone in regard to contacts saved on the phone, calls received, dialled or missed, SMSs sent or received and calendar entries.

(e) The seventh appellant admitted that he was the owner of a Nokia Supernova 7210 seized on the day of his arrest. He also admitted that he used cell phone number 084[…]. He admitted the correctness of the cell phone data and the tower locations as extracted by Cell C relating to his cell phone.

(f) The eighth appellant admitted he was the owner of a Nokia 2700 seized on the day of his arrest and that he used cell phone numbers 082 […] and 082[…]. He also admitted the correctness of the cell phone data and tower locations as extracted from the systems of Vodacom relating to his cell phone numbers.

(g) The ninth appellant admitted that he was the owner of the Nokia cell phone seized on the day of his arrest and that prior to 2 July 2011, he used cell phone number 082[…]. He admitted the correctness of the cell phone data and tower locations as extracted from the systems of Vodacom relating to his cell phone number.

[52] Furthermore, during the trial, evidence by Mr Reyneke,[10] employed by Vodacom, Mr Pillay,[11] employed by MTN and Ms Makhubu,[12] employed by Cell C, was led by the State. Evident from the admissions made by the defence and the *viva voce* evidence of the state witnesses regarding the cell phone communication between the appellants that the evidence was not in dispute.

[53] Warrant Officer Riekert compiled a schematic diagram of the numbers with whom the first appellant communicated, which included the communications with the appellants. The report was handed in as Exhibit "CA".

[54] Mr. van Rensburg compiled a chronological schedule of the first appellant's communications with numbers connected with the Post Office (including the appellants) in relation to the fraudulent transactions, as well as indicating the

[10] Exhibits "BF", "BG", "BH", "BI", "BJ", "BK", "F", "J", "K" and "L".

[11] Exhibits "AZ", "BA", "BB", "BC" and "C".

[12] Exhibits "BD", "BE", "C", "D", "E", "L", "M", "N", "O" and "P".

service provider towers on which phones registered during the processing of the fraudulent transactions, the schedule was handed in as Exhibit “CN”.

[55] The court *a quo* found, correctly so, that the communications referred to, were not once-off telephone calls between the appellants. The court made mention of the fact that the calls were notable as to their frequency, duration, timing and participants and also registered on the cell phone towers in the vicinity of the Post Offices where fraudulent transactions were made.

[56] The evidence presented by Van Rensburg as to the location of branches of the Post Office in relation to cell phone towers, carried a great deal of weight. The court *a quo* referred to the service provider evidence as to the precise timing of phone calls made on the phones of the first and ninth appellants, such calls were made within the ‘jurisdiction’ of the Post Office branches mentioned in the indictment.

CELL PHONE ACTIVITY IN RELATION TO FRAUDULENT WITHDRAWALS

[57] Satchwell J, in her judgment, painstakingly evaluated the cell phone data relating to communication between the appellants during the commissioning of the crimes.

[58] She, correctly so, stated the following at paragraphs [448] and [449]:

> *“[448] It is a notable feature of what are, beyond any doubt, the use of forged documents to procure fake Post Bank cards or books and fraudulent withdrawals that there is a flurry of activity around each particular account so targeted. There was fake issue of a card or a book and thereafter a burst of targeting activity - at shops, ATMS and post office branches on this account.*
>
> *[449] It is similarly a notable feature of these transactions that there is usually a flurry of communications between the cellphones of those processing the transactions (fake issues or fraudulent withdrawals) and cellphones of accused 1 or 12 in advance of, contemporaneously with or subsequent to such transactions. There is not such communication in the case of every transaction but there is no accused who has not communicated with either accused 1 or with accused 12 at some point in time.”*

[59] I cannot find any reason, why her reasoning in this regard, which dealt with the cell phone communication between the appellants comprehensively, can be faulted.

STATEMENT BY THE SECOND APPELLANT

[60] The court *a quo* dealt with the statement made by the second appellant and the admission thereof as evidence in the trial. The admissibility of the statement was dealt with during a trial within a trial, whereafter, a well-reasoned ruling was delivered. I am unable to criticise Satchwell J on her reasoning in respect of the admissibility of the second appellant's statement.[13]

[61] It was found by the court *a quo* that the statement clearly indicated that the second appellant was put in touch with Isaac via a fellow Post Office employee. He clearly received advanced notice from Isaac of transactions to be processed. Furthermore, that the second appellant did not comply with Post Office procedures when withdrawals were done by accountholders and as a result of his participation, he received payment from Isaac.

[62] As a result, the inference was made that the second appellant knew that such advanced notice was unusual, he knew that accountholders did not require the assistance of Isaac in processing transactions on their account, he knew that it was improper to receive payment from a non-accountholder for doing one's salaried job. Satchwell J correctly found that:

> *"I have no doubt that accused 2 has set out in this statement his participation in a criminal conspiracy with Isaac to process fraudulent transactions on various accounts for personal financial gain."*

[13] Exhibit "W".

[63] The finding was further strengthened by the fact that following the second appellant's arrest, his vehicle was searched and the following items were found in the vehicle:[14]

(a) Mini statement enquiry report on the Kasirivu account;

(b) A Post Bank deposit slip for R9,000.00 (nine thousand rand);

(c) Envelope with account number (Mofokeng account) written thereon;

(d) Photocopy of the first page of a passport in name of Tswangirayi with two photographs.

[64] No explanation was offered for the presence of any of the documents in the private vehicle of a Post Office teller.

[65] Furthermore, following investigations, it was found that the second appellant received incoming SMSs from Isaac. The details of Hlapane's account number and bank card were found stored on his Samsung cell phone.

STATEMENTS BY THE SEVENTH APPELLANT

[66] On 2 June 2011, the seventh appellant made two statements to his employers (SAPO), which the prosecution tendered as evidence during the trial. The first statement written by him, contained admissions, whilst the second statement written by the employer, Mr Naidoo, on his behalf, contained a confession.

[67] The admissibility of the statements into evidence was challenged on the grounds that "the manner in which they were extracted" was contrary to the provisions of section 35 of the Constitution and that the procedure followed by the employer was "done deliberately to circumvent section 227 and 219 of the Criminal Procedure Act". It was argued that one of the 'illegal actions' of the SAPO was the deliberate and orchestrated taking of statements, intending that

[14] Exhibit "AB".

these would be used in a criminal prosecution well knowing that the constitutional rights of the seventh appellant would be infringed. This was also one of the grounds raised in the appeal.

[68] A short background relating to the deposing of the statements by the seventh appellant is warranted. It is common cause that the SAPO conducted an internal investigation into allegations of fraud and corruption on the part of certain employees.

[69] This led to a raid at the Pinegowrie Post Office on 31 May 2011, resulting in the arrest of a post office employee and a third party. One of the SAPO investigators present at Pinegowrie, during the raid, Ms Van der Merwe, took a statement from the arrested employee. She subsequently prepared an affidavit in which she mentioned her suspicion of the involvement of other employees that needed to be investigated.

[70] It is further common cause that following the suspicions being aired, a meeting was held on 2 June 2011 at a MacDonalds. During this meeting, SAPO staff were informed that a series of raids were to take place on the day at selected Post Office branches. Mr Arnold Naidoo, Regional Manager, and Mr Kaunda, investigations officer, were instructed to go to the Alexandra South branch and to collect documents at the counter of the seventh appellant.

[71] After their arrival, the counter of the seventh appellant was searched. After the search, Mr Kaunda enquired from the seventh appellant whether he was willing to make a statement regarding what was found at his counter. The seventh appellant was also informed that he had the right to refuse to make a statement. He, however, informed Mr Kaunda that he had no problem in making a statement.

[72] After the statement was written by the seventh appellant, Mr Kaunda showed the statement to Mr Naidoo, who was not satisfied with the format thereof, and Mr Naidoo, with the consent of the seventh appellant, proceeded in taking down a second statement. After taking down the statement, Mr Naidoo read

the statement to the seventh appellant and the contents thereof were confirmed. A copy of the statement was handed over to the Police.

[73] It is thus evident that the seventh appellant deposed to the statements prior to him being arrested in the matter.[15]

[74] It was argued by counsel on behalf of the seventh appellant, that he was a suspect when the statements were taken from him and that the approach taken in ***S v Sebejan and Others***[16] should be followed, when deciding on whether the statements should be allowed as evidence. The court *a quo* discussed the particular case and said:

> "*Of course, in that judgment I dealt with a person who was being questioned by members of the SAPS in connection with an offence under investigation by the SAPS and who was not regarded by the SAPS as a mere witness but as a suspect. That judgment sought to ascertain whether such a suspect should receive any cautions at all notwithstanding that neither the Constitution nor the CPA made reference to a 'suspect'. It was in that context that I stated that 'The suspect is treated differently and entitled to certain protective cautions not afforded to a mere witness' [para 39]. In the present case, accused seven was not interviewed by the SAPS and was not the subject of any 'deception' by the SAPS at any time. I take the view that he was not a 'suspect' as contemplated in Sebejan supra and the concerns expressed in that judgment are not of application at the present time."*

[75] The court *a quo* noted the fact that the SAPO conducted the investigation in this matter in its own manner, regardless of the involvement of the Police. It, however, found that such conduct could not be found to be irregular. It further found that an employer has an obligation to investigate internal problems. Where such investigation may be thought to expose an employee to disciplinary censure, the employer is entitled to require the assistance of the employee in investigating and the employer may determine if or when a complaint would be made to the Police.

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[15] See exhibits "AN" and "AP".
[16] 1997 (8) BCLR 1086 (T).

[76] The challenge to the admissibility of the statements was directed to the behaviour of SAPO and the utilization thereof by the prosecution, protections of the Constitution and the CPA. However, there was no suggestion that these statements were procured at the instance of the prosecution, nor that the prosecution initiated or had any control over the production thereof. The court *a quo* mentioned the following:

> *"[36] The next question must be whether or not the prosecution is entitled to use any piece of potential evidence that comes its way. The answer is most firmly in the negative. Where there is a statement made to a member of the SAPS as a result of torture or undue pressure, where there is a statement made by an arrested person (or a suspect) to the SAPS without advisement of rights and where there is a statement made to a member of the SAPS which does not comply with the provisions of the CPA - in all these situations the prosecution must exercise a professional responsibility and reject use of such material.*
>
> *[37] However, in the present instance I cannot see that the prosecution is obliged to disavow use of this material. It does exist. It is not inherently inadmissible. The context of its production is not objectionable. There is nothing which offends either the Constitution or the CPA."*

[77] Satchwell J found that, "*no matter to whom an admission or confession tendered in a criminal prosecution is made, it must be made freely and voluntarily and while the maker of the statement is in his or her sound and sober senses.*" She furthermore, found that the seventh appellant did not testify in the trial within a trial, and that there was no indication that there was any verbal or physical pressure on the seventh appellant to make the statements. I am impelled to agree with her findings in this regard. Therefore, this court finds that the statements made by the seventh appellant were admissible as evidence.

[78] The court *a quo,* on the basis of the contents of the statements, found that the seventh appellant implicated himself in a series of fraudulent withdrawals. Furthermore, that the withdrawals were accomplished through cell phone contact with a person prior to the person's arrival at the Post Office to do the

transaction. Furthermore, the cell phone records of the seventh appellant confirmed the allegations made in his statements. Thus, the cell phone records corroborated the allegations made by the seventh appellant in his statements.

[79] In the judgment, at paragraph [300] and [301], the following was found;

> *"Accused 7 was able to notice that he was performing withdrawals on cards which had been re-issued at Pinegowrie. Accused 7 was also able to notice when he was presented with forged identity documents. Accused 7 own statement indicates his awareness of security checks in respect of larger amounts and his ability to decline to perform fraudulent withdrawals in excess of R 10,000.*
>
> *The cell phone records confirm accused 7 statements in a number of respects — the caller, that there were checks before arrival to see that he was working. The Post Office records confirm accused 7 statement - that he did not perform withdrawals in excess of R 10,000."*

JUDGMENT BY THE COURT A QUO- STATEMENTS MADE BY THE SECOND AND SEVENTH APPELLANTS

[80] As mentioned above, during the trial and following trials within trials relating to the admissibility of the statements in contention, the court *a quo* made provisional rulings[17] regarding the admissibility of the statements. The court *a quo,* at the close of the State's case, made a final ruling regarding the admissibility of the statements made by the second and seventh appellants. Satchwell J referred to various case law[18] in her well-reasoned conclusion[19] which include the following finding:

> *"In the present case, the issue of possible unfairness does not arise. I find that there is no reason to amend my earlier provisional ruling made at the end of each trial-within-a-trial that each of the statements (Exhibits W) and (Exhibits AN and AP) is admissible in evidence and that Exhibit W is admissible in evidence against*

[17] Case Lines 076-493.
[18] *S v Mkwanazi* 1966 (1) SA 736 (A), S v *Ntuli* 1993 (2) SACR 599 (W), S v *Ndhlovu* 2002 (2) SACR 325 (SCA), *S v Molimi* 2008 (2) SACR 76 (CC).
[19] Case Lines 076-493.

accused 2 and that Exhibits AN and AP are admissible in evidence against accused 7."

EVIDENCE IN THE DEFENCE CASE

[81] All the appellants were represented throughout the trial. The first, second, seventh and ninth appellants elected not to testify under oath during the trial.

[82] The third appellant testified during the trial. He stated that he attended "school" for tellers and he was educated on how to scrutinize documents in order to confirm the contents thereof. He was fully aware of the fact that when processing transactions on bank accounts, he had to check the face, race and gender of the photograph on an identity document, against the person presenting the documents at the counter. He further testified that the signatures on withdrawal slips had to be verified against other documents presented; so, as the identity numbers and names on identity documents against the Post Bank account.

[83] The fourth appellant testified that she received training from the Post Office on its products and Post Bank procedures. She was taught on how to check the age of a customer by looking at them and comparing the observation against the identity document. She confirmed that she received training in checking identity documents for forgeries.

[84] The fifth appellant testified that she was originally employed as a sales lady at the Post Office. She achieved R1 status within the Post Office environment as a supervisor. Under cross-examination, she confirmed that she had sight of circulars within the Post Office as to what tellers should be 'on the lookout for' regarding fraudulent identity documents. She not only confirmed her training but she also was able to identify problems on various documents referred in court by the State. Furthermore, she conceded that she handled and processed some of the documents handed in as exhibits, which gave rise to the charges.

[85] The sixth appellant testified that after she completed Matric, she was employed by the Post Office as a mail sorter. She received training during her employment but was never sent to the Learning Institute for further training. She stated that she was not trained on how to identify false identification documents, but she was trained as a cashier.

[86] The eighth appellant testified that he worked at several branches of the Post Office over a 12-year period. He was a Branch Manager for 9 years. In his evidence, he disclaimed knowledge of the systems as described by the state witnesses. He stated that he relied on his personal communications with his Area Manager regarding procedures when processing transactions.

[87] He testified that he had no previous knowledge of the first and ninth appellants. The only reason why his cell phone number was stored on the first appellant's cell phone, was because, in his capacity as branch manager, his cell number was displayed at the Hillbrow Post Office for all members of the public to utilize and the first appellant must have obtained his cell phone number in the Post Office as displayed. Furthermore, he was of the view that the first appellant must have been a dissatisfied customer, and for that reason, he got his cell number from Client Services.

[88] He further stated that he was unable to recall if he communicated with the first appellant previously.

[89] It was not disputed that the eighth appellant performed transactions using the login name and password of other tellers. He had no satisfactory explanation for operating the computer system under the names of others, he however, claimed that it was permitted. On the other hand, he conceded that previously, tellers were disciplined for permitting another person to work on their systems. His behaviour was in clear conflict with the very reason for having a personal login and password system. If another employee uses another's name and private password, then the controls cease to exist. The court found that the eighth appellant was a branch manager and could not have been unaware of

the importance of the login system. It was found, and correctly so, that his actions in operating the computer system under names of other tellers, clearly pointed to his attempts to hide his unlawful activities.

[90] In evaluating the evidence of the third, fourth, fifth, sixth and eighth appellants, *the* court *a quo* found:[20]

> *"This court cannot set itself up as a handwriting expert or photographic expert. But anyone with eyes to see can frequently note when photographs are totally darkened and therefore no face is observable; when signatures on a withdrawal slip bear no resemblance to the signature on a passbook or card or identity document; when names are incorrectly spelt as between documents. None of the accused are visually challenged i.e., blind. No teller at the Post Office was asked to do brain surgery -what was expected was observance of procedures which included looking at documents, comparing documents, checking spelling, certifying that a check had been done, seeking authorization in certain circumstances and only obtaining same by providing correct information in order to obtain such authorization."*

COMMON CAUSE

[91] It is important to note that most of the evidence presented in the matter, by the State, was not in dispute. The common facts are:

(a) The Post Bank accountholders referred to in the relevant counts in the indictment, were defrauded of large sums of money from their accounts by unknown persons.

(b) All the said accountholders were refunded by the Post Office for the losses suffered due to the unlawful, fraudulent withdrawals on their respective Post Bank accounts.

(c) The fraud on the relevant counts in the indictment was committed by a group of criminals who falsified personal documents and thereafter, presented

[20] See judgment para 175.

themselves at various Branches of the Post Office to collect the amounts withdrawal.

(d) That Fusi Molelo was arrested on 27 May 2011 at Gardenview Post Office, while he attempted to make a fraudulent withdrawal from the account of Mr PM Ndlovu.[21] Following his arrest, he pleaded guilty and was sentenced for his involvement on the Ndlovu account.

(e) That no facial-, fingerprint- or signature identification facilities or any CCTV cameras were available or installed at the Post Office Branches mentioned in this matter.

(f) That the only requirement to process a withdrawal on a Post Bank account was that the accountholder had to provide a bar coded identity document to the Post Bank teller in order to process a transaction.

(g) That the first and ninth appellants were not employed by the SAPO, however they knew each other.

(h) That during the periods mentioned in the indictment, the second to eighth appellants were employed by the SAPO in capacities of either, branch managers, acting branch managers and/or tellers. The second appellant was employed at the Pinegowrie Post Office. The third appellant was employed at the Saxonwold Post Office. The fourth and fifth appellants were employed at the Gardenview Post Office. The sixth appellant was employed at the Randburg Post Office. The seventh appellant was employed at the Alexandra South Post Office. The eighth appellant was employed as branch manager at the Hillbrow Post Office. The ninth appellant was employed at the Hillbrow Post office.

(i) That the third and fourth appellants are brother and sister.

[21] Counts 82-84.

(j) That the fourth and sixth appellants worked together at North Riding Post Office and they were friends.

(k) That the second and sixth appellants worked together at the Randburg Post Office prior to the incidents.

(l) That the third and eighth appellants were friends and had previously worked together.

(m) It is also common cause that the second, third, fourth, fifth, sixth, seventh and eighth appellants processed some of the disputed transactions.

(n) That there was cell phone communication between cell phone numbers belonging to the third, seventh and eighth appellants and cell phone numbers belonging to the first appellant.

(o) That the fifth appellant had cell phone conversations with the ninth appellant.

(p) That the second appellant used the following cell phones: a Nokia E90, a Samsung 6625 and an HTC. The cell phone numbers used by him were 083 […] and 084 […].

(q) That the third appellant used a LG cell phone with cell number 083 […].

(r) That the fourth appellant used the following cell phones: a Samsung E250 and a Nokia 2700. The cell phone numbers used by her were 084 […] and 083 […].

(s) That the sixth appellant used the following cell phones: a Vodafone and Nokia 2730. The cell phone number used by her was 082 […].

(t) That the seventh appellant used a Nokia Supernova 7210 cell phone with cell phone number 084 […].

(u) That the eighth appellant used a Nokia 2700 cell phone. The cell phone numbers used by him were 082 […] and 082 […].

(v) That the ninth appellant used a Nokia cell phone with number 082 […].

(w) That Mr Morose David Motsoane was part of the enterprise described in this matter. Furthermore, that he was arrested and on 2 March 2012, whereafter he was sentenced in the Pretoria Commercial Crimes Court after pleading guilty on charges relating to the R42 million "Post Bank Heist". Mr Motsoane was sentenced to an effective period of 10 years imprisonment.

ARGUMENTS BY THE APPELLANTS AND THE RESPONDENT

[92] Written arguments were prepared by all parties. Mention has to be made of the written arguments presented by Ms Roestorf on behalf of the second, fourth, sixth and ninth appellants which consists of 215 (two hundred and fifteen) pages. The court is indebted to counsel for her sterling efforts.

[93] The written arguments presented by the State, consists of 422 (four hundred and twenty-two) pages. Ms Vos evidently burnt the candle on both ends, not only during the trial that ran for more than a year and a half, but also, in preparing well-reasoned heads of argument in the matter. Similarly, the court is indebted to counsel for her sterling efforts.

[94] I will now turn to the essence of the appeal.

THE LAW – COURT OF APPEAL

[95] The question on appeal regarding the appellants' convictions is ultimately whether the evidence in the trial was sufficient to prove the guilt of the appellants beyond a reasonable doubt; this being the State's burden of proof. In this regard, Plasket J in ***S v T***[22] held that:

[22] 2005 (2) SACR 318 (E) para 37.

"The State is required, when it tries a person for allegedly committing an offence, to prove the guilt of the accused beyond a reasonable doubt. The high standard of proof – universally required in civilised systems of criminal justice – is a core component of the fundamental right that every person enjoys under the Constitution, and under the common law prior to 1994 to a fair trial. It is not part of a Charter for criminals and neither is it a mere technicality. When a Court finds that the guilt of an accused has not been proved beyond reasonable doubt, that accused is entitled to an acquittal, even if there may be suspicions that he/she was, indeed, the perpetrator of the crime in question. That is an inevitable consequence of living in a society in which the freedom and the dignity of the individual are properly protected and are respected. The inverse – convictions based on suspicion or speculation – is the hallmark of tyrannical systems of law. South Africans have a bitter experience of such a system and where it leads to."

[96] ***S v Van der Meyden***[23] emphasizes that while the *onus* of proof in a criminal case is discharged by the State if the evidence establishes the guilt of the accused beyond reasonable doubt, the corollary is that an accused is entitled to be acquitted, if it is reasonably possible, that the accused might be innocent.

[97] The question, otherwise cast, is therefore, whether at the end of the trial, the evidence presented in the trial was, as a whole, sufficient to ground the conviction of the appellant. As confirmed in ***S v Van der Meyden supra*** and as adopted and affirmed by the Supreme Court of Appeal in ***S v Van Aswegen,***[24] the evidence in the trial as a whole must be considered. The overall picture is therefore of central importance.

[98] ***S v Leve***[25] succinctly sets out the approach to be adopted by, and the parameters of an appeal court in an appeal against a conviction, as follows:

"The fundamental rule to be applied by a court of appeal is that, while the appellant is entitled to a rehearing, because otherwise the right of appeal becomes illusory, a court of appeal is not at liberty to depart from the trial court's findings of fact and credibility, unless they are vitiated by irregularity, or unless an examination of the

[23] 1999 (1) SA 447 (W) at 448 F-G.
[24] 2001 (2) SACR 97 (SCA).
[25] 2011 (1) SACR 87 (ECG) para 8. Also see *R v Dlhumayo and Another* 1948 (2) SA 677 (A).

record of evidence reveals that those findings are patently wrong. The trial court's findings of fact and credibility are presumed to be correct, because the trial court, and not the court of appeal, has had the advantage of seeing and hearing the witnesses, and is in the best position to determine where the truth lies..." [my emphasis]

[99] That being the case, the credibility findings, and factual findings by the court *a quo* cannot be disturbed unless the recorded evidence showed them to be clearly wrong.[26] This was expressed in ***S v Francis***[27] as follows:

"The Court's powers to interfere on appeal with the findings of fact of a trial Court are limited… In the absence of any misdirection the trial Court's conclusion, including its acceptance D's evidence, it is presumed to be correct. In order to succeed on appeal, accused No 5 must therefore convince us on adequate grounds that the trial Court was wrong in accepting D's evidence – a reasonable doubt will not suffice to justify interference with its findings. Bearing in 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."

[100] It is evident, in this matter before me, that the court *a quo* was in a more favourable position than this court to form a judgment on facts and credibility. Therefore, I can only interfere with the judgment of the court *a quo* if it has been established that there were misdirections of fact or if it had overlooked other facts or probabilities.

LAW - CIRCUMSTANTIAL EVIDENCE

[101] The convictions of the appellants were based on circumstantial evidence presented by the State. The court *a quo* accepted the circumstantial evidence pertaining to the cell phone records and communications between the appellants, and on that basis, found that the appellants were involved in the commissioning of the crimes. This reasoning of the court *a quo* is one of the main grounds, relied on by the appellants in this appeal. In respect of the

[26] *S v Hadebe and Others* 1997 (2) SACR 641 (SCA) at 645E.
[27] 1991 (1) SACR 198 (A) at 204 C-E.

evaluation of circumstantial evidence, the following decisions and principles are particularly pertinent:

[102] It is trite that once a court is faced with circumstantial evidence it naturally flows that it is duly called upon to draw inferences from the evidence thus presented.

> *"In reasoning by inference there are two cardinal rules of logic which cannot be ignored:*
> *(1) The inference sought to be drawn must be consistent with all the proved facts. If it is not, the inference cannot be drawn.*
> *(2) The proved facts should be such, that they exclude every reasonable inference from them save the one sought to be drawn. If they do not exclude other reasonable inferences, then there must be doubt whether the inference sought to be drawn is correct."*[28]

[103] The value of circumstantial evidence is often found in a whole range of independent circumstances, all giving rise to the same conclusion. It is imperative for the court to consider all these circumstances as a whole and not to assess each in isolation. In ***S v De Villiers***[29] the following was said;

> *"The court must not take each circumstance separately and give the accused the benefit of any reasonable doubt as to the inference to be drawn from each one so taken. It must carefully weigh the cumulative effect of all of them together, and it is only after it has done so that the accused is entitled to the benefit of any reasonable doubt which it may have as to whether the inference of guilt is the only inference which can reasonably be drawn. To put the matter in another way, the Crown must satisfy the court, not that each separate fact is inconsistent with the innocence of the accused, but that the evidence as a whole is beyond reasonable doubt inconsistent with such innocence."*

[104] In ***De Villiers supra*** at 508 it is said: "…*even two particles of circumstantial evidence-though taken by itself weigh but as a feather – join them together, you will find them pressing on the delinquent with the weight of a millstone*…."

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[28] S v Blom 1939 AD 188 at 202; See also S v Mtsweni 1985 (1) SA 590 (A) at 593.
[29] 1944 AD 493 at 508-509.

[105] Circumstantial evidence is indirect proof from which a court is required to draw inferences which, when weighed with all other evidence, may contribute towards proving a fact in issue. The inference must comply with certain rules of logic.[30] The reasonable inference has to be drawn only from proved facts and not from facts based on suspicion.[31]

[106] Circumstantial evidence has on occasion been described as a chain, the links of which consist of pieces of evidence. This is not correct as it implies that the chain will be broken once one piece of evidence is rejected. It is better to compare it with a braided rope: as the strands break, the rope weakens and conversely, as strands are added, the stronger it gets. The gist of the matter is that one piece of circumstantial evidence may be inconclusive, but once other evidence is added, it gains probative force.[32]

[107] The principles that are to be applied in assessing circumstantial evidence were re-stated as follows in ***S v Reddy & Others***;[33]

> "*In assessing circumstantial evidence, one needs to be careful not to approach such evidence upon a piece-meal basis and to subject each individual piece of evidence to a consideration of whether it excludes the reasonable possibility that the explanation given by an accused is true. The evidence needs to be considered in its totality. It is only then that one can apply the oft-quoted dictum in R v Blom 1939 AD 188 at 202-3, where reference is made to two cardinal rules of logic which cannot be ignored. These are, firstly, that the inference sought to be drawn must be consistent with all the proved facts and, secondly, the proved facts should be such 'that they exclude every reasonable inference from them save the one sought to be drawn'."*

[108] The *ratio* of Hendricks J in ***S v Nkuna***[34] sets out the approach to circumstantial evidence, at paragraph 121 as follows:

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[30] S v Burger 2010 (2) SACR 1 (SCA).
[31] S v Mseleku 2006 (2) SACR 574 (D).
[32] S v Maluka (CC 14/2019; M69/2018[2021] ZAMPMBHC 52 (5 November 2021).
[33] 1996 (2) SACR 1 (A) 8 at C-H.
[34] 2012 (1) SACR 167 (B).

"The evaluation of circumstantial evidence must be guided by a test of reasonableness. The onus on the State is not that it must prove its case with absolute certainty or beyond a shadow of a doubt. All that is required is such evidence as to satisfy the court and prove its case beyond a reasonable doubt. It is trite law that the accused is under no legal obligation to prove his innocence. The State must prove the guilt of the accused beyond a reasonable doubt".

[109] The court *a quo* accurately and thoroughly dealt with the frenzy of cellphone communications between the appellants. A summary of the number of cellphone calls, SMSs and communication between the appellants was as follows;

(a) First appellant and second appellant: 370 (three hundred and seventy) communications during 2011 using the 076 number.

(b) First appellant and the Pinegowrie Post Office: 18 (eighteen) calls during 2011 on the 076 number.

(c) First appellant and third appellant: 178 (one hundred and seventy-eight) calls during 2011 using the 076 number.

(d) First appellant and the Saxonwold Post Office: 66 (sixty-six) calls during 2011 on the 076 number.

(e) First appellant and fourth appellant: 266 (two hundred and sixty-six) calls during 2011 on the 076 number.

(f) First appellant and the North Riding Post Office: 5 (five) calls during 2011 on the 076 number.

(g) First appellant and fifth appellant: 25 (twenty-five) calls during 2011 on the 076 number.

(h) First appellant and sixth appellant: 180 (one hundred and eighty) calls and SMSs on the 076 number during 2011.

(i) First appellant and seventh appellant: one communication during 2010, three communications during 2011.

(j) First appellant and Fusi Molelo: 9 (nine) communications during 2010 and 22 communications during 2011 on the 076 number.

(k) First appellant and eighth appellant: 353 (three hundred and fifty-three) calls during September 2009 to December 2010 on the 082 number; 303 (three hundred and three) calls during 2010 on the 084 number; 77 (seventy-seven) calls on the 076 number during 2011.

(l) First appellant and the Hillbrow Post Office: 74 (seventy-four) calls during September 2009 and December 2010 between the Hillbrow Post Office and the 082 number; 33 (thirty-three) calls between the Hillbrow Post Office landline and the 076 number.

(m) First appellant and ninth appellant: 1514 (one thousand and fourteen) calls during 2010 on the 076 number and 1024 (one thousand twenty-four) calls on the 076 number during 2011.

(n) Ninth appellant and the first appellant: 1469 (one thousand four hundred and sixty-nine) calls on multiple phones during 2011.

(o) Ninth appellant and the fifth appellant: 359 (five hundred and fifty-nine) calls during 2011.

(p) Ninth appellant and seventh appellant: 72 (seventy-two) calls during 2011.

[110] During the period ranging from September 2009 until 2011, a total number of 6421 (six thousand four hundred and twenty-one) communications were recorded between the appellants. Even more conspicuous is the fact that

these communications between the appellants occurred in most instances, prior to and contemporaneous with and after the fraudulent transactions were processed. The court *a quo*, correctly so, found that, '*These communications are in an extraordinary number on a daily basis. It is difficult to conceive of any legitimate basis for accused 1 to be in such communication with employees of the Post Office.*'

[111] Further, the circumstantial evidence regarding the cell phone communication has to be evaluated, not in isolation, but in relation to each and every fraudulent transaction processed by the appellants. Furthermore, the fact that the first, second, seventh and ninth appellants did not testify in their defence, has to be considered when the weight of the circumstantial evidence is considered. The court has to consider whether the versions of the third, fourth, fifth and sixth appellants, tendered during trial, were reasonably possibly true.

[112] The second appellant processed fraudulent transactions on the Viljoen (count 49-50), Mashile (count 55 and 57), Mfukuli, (count 73 and 74), Nkomo, (count 75 and 76), Maringa (count 77 and 78) and Tseuoa (counts 79-81) accounts. He, furthermore, processed re-issues of Post Bank cards on the Vellem (count 51, 53 and 54), Ndlovu, (count 64-66), Mafatle (count 67-69) and Mofokeng (count 70-72) accounts. The second appellant was also involved in an attempted re-issue of a bank card on the Kasirivu (count 85) account as well as of the re- issue of a Post Bank book on the Mabula account (count 58-60).

[113] The second appellant stated in his statement, which was admitted as evidence in the matter, that the first appellant used two phone numbers to communicate with him, namely, 076 […] and 084[…].

[114] In this statement, the second appellant admitted having been contacted by one Vusi, who knew Isaac, the first appellant. The statement clearly indicates that the second appellant was introduced to the first appellant, by a fellow Post Office employee. It is evident that the second appellant, in advance, received notice from the first appellant, when transactions would be processed. The

second appellant, in detail, set out his participation in the criminal activities in order to process fraudulent transactions for personal financial gain.

[115] The court *a quo* took into consideration the fact that the second appellant did not give evidence in his defence, but remained silent. The election of the second appellant not to testify, evidently impacted negatively on his case. Silence of an accused during trial was discussed in the case of *S v Boesak*[35] and the following was said;

> *"…The fact that an accused person is under no obligation to testify does not mean that there are no consequences attaching to a decision to remain silent during the trial. If there is evidence calling for an answer, and an accused person chooses to remain silent in the face of such evidence, a court may well be entitled to conclude that the evidence is sufficient in the absence of an explanation to prove the guilt of the accused..."*

[116] The third appellant processed fraudulent transactions on the Godloza (count 39 and 40) Mahangule (count 43 and 44), Jongwana (count 45 and 46) and MT Ndlovu (count 65 and 66) accounts. Prior to or contemporaneous with the fraudulent transactions, he was in direct communication with the first and second appellants. At the time of the fraudulent transactions on the Mahangule and Jongwana accounts, the third appellant was in direct contact with the first appellant and thereafter in direct contact with fourth appellant.

[117] The court *a quo* found, *'like his fellow accused, he showed no interest in the revelation that he had been communicating on an unremembered number with an unremembered person on the number of the first appellant.*'

[118] The fourth appellant processed transactions on the Mahangule (count 43 and 44), Jongwana (count 45 and 46), Vellem (count 52 and 53) and Mfukuli (count 73 and 74) accounts. Prior to or contemporaneous with or subsequent to transactions on the Vellem and Mfukuli accounts, the fourth appellant was in direct communication with first appellant.

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[35] 2001 (1) SA 912 (CC) para 24.

[119] The version presented by the fourth appellant with regard to her communication with the first appellant was rejected by the court *a quo as* false and improbable. In paragraph [234], the court *a quo* said:

> *"She asks this court to believe that she engaged in over 300 conversations with an unknown admirer whom she never met. She asks this court to believe that they spoke to each other many times a day, during working hours, about his proposals of love. She asks this court to believe that accused 1 (whose phone made and received these calls) was frenetically speaking to her about nothing more than love. She asks this court to believe that she engaged in this telephonic flirtation only during the period of these fraudulent transactions. She asks this court to believe that she knew neither the surname, workplace, appearance of this person with whom she communicated many times a day. She asks this court to believe that she had no concern about meeting this caller even when he claimed that he was visiting her branch of the Post Office. This court cannot accept that she did not know that she was talking to accused 1 and that they only discussed his unfulfilled love for her. This court can only infer that they were conversing about the transactions processed by her."*

[120] This court concurs with the finding of the court *a quo* that the fourth appellant was an unimpressive witness. During her evidence, she, in effect, created more problems than she resolved. She was in dynamic contact with the first appellant and her explanation therefore was ridiculous; she enabled the fraudulent transactions and, even during her testimony, was reluctant to admit the obvious fraud committed under her watch.

[121] The fifth appellant was involved in processing transactions on various Post Bank accounts, namely, the Jongwana (count 45 and 46), Motale (count 47 and 48), Viljoen (count 49 and 50), Mabula, (count 59 and 60) Pietersen (count 62 and 63), MT Ndlovu (count 65 and 66), Liwane Burial Society/Nkomo (count 75 and 76), Mfukuli (count 73 and 74), PM Ndlovu (count 83 and 84) accounts.

[122] She was in direct communication with either the first and/or the ninth appellants immediately prior to, contemporaneous with or subsequent to the transactions

on the Jongwana, Viljoen, Liwane, Pietersen, MT Ndlovu, Mfukuli and Tseuoa accounts.

[123] The court *a quo* found that:

> *"Accused 5 processed withdrawals which were noticeably fraudulent. The problems with the transactions were obvious. Signatures differed, names were incorrect, photographs were unreadable, addresses were unrelated. She was not busy. On some days the only withdrawals she processed were these fraudulent withdrawals (Motale, Viljoen, Mabula, Pietersen, and MT Ndlovu accounts) and on other days she only processed two or three withdrawals. Even though she had obtained differing signatures from the purported customer on the PM Ndlovu account, she admitted she was prepared to process the withdrawal and make payment to him."*

[124] The court *a quo,* during the evaluation of the evidence by the fifth appellant, unequivocally found that:

> *"Both versions of cellphone communications are ridiculous. The only reason she gave accused 12 her phone number was because he was to bring her old clothes to view at her work which meant he did not need her phone number. She initiated the first call to accused 12. Accused 5 claims to find accused 12 old and sick, yet she herself contacts him over 140 times. Amazingly, she does so almost exclusively before or after fraudulent transactions. When the customer whose transaction she was processing was arrested, she was immediately in contact with accused 12."*

[125] Satchwell J stated the following in her judgment regarding the fifth appellants testimony:

> *"[260] Accused 1 cellphone is supposedly contacted only for purpose of arranging rental accommodation. She never asked nor knew his name. She does not know the name of his estate agency. However, she could not have been looking for*

accommodation because in her bail application she claims she had resided in her present address for over a year. The calls continue. Again, when the distress and shock of her customers arrest takes place in her presence, she is in dynamic contact with accused 1.

[261] She then changed her own cellphone number after Fusi Mulelo's arrest and ceased communication with accused 1.

[262] Accused 5 was a most unsatisfactory witness — she attempted to evade questions by telling long stories which were irrelevant; she avoided giving answers until really pressed; she shilly-shallied over admitting what was clear for all to see on documents."

[126] The sixth appellant was involved in processing transactions on the Vellum (count 54), Mashile (count 54-57), Mabula (count 59 and 60) and Mfukuli (count 73 and 74) accounts.

[127] She was in communication with a number of persons employed at other Post Offices, who were also communicating with the first and ninth appellants. Interestingly, on 20 April 2011, she telephoned Nicolette Oyetola, who was employed at Highlands North. She telephoned the second appellant, employed at Pinegowrie. She furthermore, communicated with the first appellant on the 076 and 084 numbers.

[128] The sixth appellant's explanation regarding her communication with the first appellant was implausibly false. She testified that she communicated with a person named "Ike" on the cell number of the first appellant, because Ike was assisting her with problems, she experienced with a vehicle she purchased. She explained that the reason for Ike's name to be stored on her phone was because she requested him to obtain a quotation for her vehicle. She testified that because Ike was too busy to assist her, he requested a Nigerian man to help her and to whom she could sell her vehicle. She stated that she did not feel comfortable to deal with a Nigerian man and therefore, she cancelled the deal with Ike and she also removed his number from her phone. She testified that she met Ike and Ike was not the first appellant.

[129] She furthermore, testified that she also practiced as a traditional healer, which explained the telephone contact with a person identified on her cellphone as “Saac”.

[130] It was noticeable that Ike and Saac called the sixth appellant in succession of each other, which in itself is quite remarkable and strange.

[131] The sixth appellant testified that during her dreams, she would dream of numbers given to her by her ancestors. She would then save the numbers on her cell phone to play Lotto. She also suggested that she used “s/n” before the stored numbers, which was an abbreviation for “safe number”. This was done because she suspected her husband of stealing her “lotto numbers”. She however, conceded during cross examination that the numbers were incomplete for purposes of playing Lotto. She stated that in order to complete the sequence of numbers, she relied on the ancestors to contact her in the future. Undoubtedly, this preposterous explanation was provided in order to explain why the details of the Mashile account number were stored on her cell phone.

[132] The seventh appellant was involved in processing fraudulent transactions on the Mahangule (count 43 and 44), Vellem (count 52 and 53), Mashile (count 56 and 57), Mabula (count 59 and 60), Pietersen (count 62 and 63), Mfukuli (count 73 and 74), Liwane Burial Society/Nkomo (count 75 and 76) and Mt Ndlovu (count 65 and 66) accounts.

[133] Immediately prior to, contemporaneous with or subsequent to the Mahangule, Mabula, Pietersen and Mfukuli transactions, he was in direct communication with the ninth appellant. Furthermore, the phone number of the ninth appellant was found at the counter of the seventh appellant after his arrest.

[134] The eighth appellant was involved in processing transactions on the Rasoeu (count 3, 4 and 5), Mrubata (count 7), Sikhosana (count 16 and 17), BJ Ntuli (count 8 and 9), Nkuna (count 30 and 31), Mali (count 32 and 33), Radebe,

(count 35 and 36) Mabula, (count 58, 59 and 60) Liwane Burial Society/Nkomo (count 75 and 76) and Kasirivu (count 85) accounts.

[135] He was also involved in certifying fraudulent third-party documents on accounts not opened at the Hillbrow Post Office, namely BJ Ntuli, J Ntuli and NE Ntuli. The three fake Ntuli accounts were opened on 6 November, of which one was opened at Hillbrow Post Office. Yet the documents in respect of all three fake accounts were certified by the eighth appellant on 8 November (after the accounts were opened and not at the time of opening). There was no explanation as to the manner in which the account documents from other branches made their way to the eighth appellant at Hillbrow Post Office.

[136] He also communicated with the first appellant contemporaneously at the time of the Rasoeu, Mali, Radebe and Liwane transactions. The first appellant saved both the personal cell phone number of the eighth appellant and that of the Hillbrow Post Office on his phone. The first appellant also phoned the Hillbrow Post Office landline. It appeared that the eighth appellant was the first of the Post Office employees with whom the first appellant was in contact, which was as far back as November 2009. There was no doubt that the eighth appellant was in active communication with the first appellant over a period of years.

[137] The eighth appellant claimed that he utilized his private cellphone on 292 occasions to communicate with the same number, which belonged to an unknown person who might have been a customer experiencing urgent problems with issues regarding the Post Office. He furthermore, stated that these conversations on his private cell phone could not have been dealt with on the Post Office landline, this in itself is extraordinary. The name, number and nature of the customer's needs were not recorded on his phone and nor were the details recorded on a desk pad or diary by the eighth appellant. He testified that he had no recollection of the nature of the 74 (seventy) SMSs exchanged with the same number. Even more extraordinary, was the 310 (three hundred and ten) calls and 70 (seventy) SMSs between him and the first appellant on the "076" cell phone number.

[138] The court *a quo* found that the fact that the eighth appellant did not claim any expenses relating to these calls on his private cell phone, '*is extraordinary*.' The fact that he did not claim the private expenses was a clear indication that the calls were private calls for which he was not entitled to be reimbursed for.

[139] The eighth appellant performed transactions using the login name and password of other tellers. His explanation in this regard was questionable, to say the least. He claimed that it was permitted to use another's login details. He, however, admitted that disciplinary proceedings were previously instituted against tellers for allowing another person to login on the system with their details. His behaviour clearly ignores the very reason for having any login and password system at all- this is one of the few security checks which the Post Office had to track transactions, namely to check which employee accessed the system and which employee accessed an account. He was employed as a branch manager and it was highly unlikely that he was not aware of the importance of the login details and its objects. The eighth appellant's operation under the names of other tellers was an indication of one thing, that he attempted to hide and conceal his criminal activities.

[140] It was found by the court *a quo* that, '*The version of accused 8 was confused — in the case of his evidence concerning the Rasoeu account, he offered different versions in cross-examination of witnesses and then, in his own evidence, new versions in his own evidence and often just deflection rather than explanation.'*

[141] The value of circumstantial evidence is often found in a whole range of independent circumstances, all giving rise to the same conclusion. It is imperative for the court to consider all these circumstances, as a whole and not assess each in isolation. Circumstantial evidence has on occasion been described as a chain, the links of which consist of pieces of evidence. This is not correct as it implies that the chain will be broken once one piece of evidence is rejected. It is better to compare it with a braided rope: as the strands break, the rope weakens and conversely, as strands are added, the stronger it gets. The gist of the matter is that one piece of circumstantial

evidence may be inconclusive, but once other evidence is added, it gains probative force.

[142] Having considered the totality and the mosaic of evidence, I am of the view that the court *a quo* made the correct findings in its judgment with regard to the circumstantial evidence in this matter, wherein it found:

> *"**Approach to Circumstantial Evidence***
> *[456] As far as accused 2 to 8 are concerned, the employees of the Post Office, I have evaluated the case against them in two ways.*
>
> *[457] Firstly, I have had regard to the evidence of the accountholders which established beyond doubt that there was more than one or a few fraudulent transactions on their accounts. This was then corroborated by the evidence of Motsoane. Against that background, I have then considered the evidence that each of these accused was involved in or processed or authorized a fraudulent transaction. I have accepted that all of us make mistakes in our working day and that the Post Office and Post Bank training of staff, equipment, procedures for authorization are archaic and of little use to any business operation and these may explain and justify the errors on the part of the accused. If that were the end of it, I might have said that the circumstantial case did not establish the guilt of each or every accused beyond reasonable doubt. However, added to the undoubted existence of the systemic fraudulent enterprise and the fraudulent processing and authorization of these accused were their extraordinarily timed and located communications with the non-employees, accused 1 and 12, which took the circumstantial case to a much higher level of complexity. On the basis of the proven fraudulent system, the proven fraudulent processing and authorization, the proven interaction in that particular manner with accused 1 and 12 I am satisfied that the only inference which I can draw which is consistent with all proven facts and which inference is not challenged by any other proven facts, is that each of accused 2, 3, 4, 5, 6, 7, and 8 are guilty of the offences of theft of which they are charged.*
>
> *[458] Secondly, I have had regard to the activities of each accused in relation to his job requirements and specifically in relation to the disputed transactions. The inference must properly be accepted that each accused could, on more than one occasion, have made an error in practice or procedure or not even been erroneous.*

That evidence alone would have resulted in an acquittal especially when one bears in mind that post office management have been incapable of offering a coherent picture of training of each employee, production of manuals as to procedures, production of methods of identifying fraudulent documentation. Post Office management has not invented/availed themselves/introduced into their system, the modern equipment which would scan each and every document required so as to remove the responsibility of error from the human eye at the counter and the human voice and one obtains authorization over the telephone. However, the evidence of both the accountholders and the documents made it clear that these were not just erroneous transactions. They took place so frequently, so linked in time and space, so completely acquisitively that they could be nothing other than a deliberate and planned design to empty the accounts in question. It would be reckless of the planners and manager of this plot to go to all this trouble but leave a weak link in the form of randomly allocated and completely unaware and innocent tellers. That there was no such recklessness emerges from the evidence of Motsoane and the telephone calls - there was a plan: it required information to be obtained from Post Office employees, documents were to be produced to beguile the records and authorization staff of Post Bank, tellers and staff were suborned to facilitate acquisition of funds out of these accounts; they were recompensed for their risk and their help; they were notified in advance of the pending transaction which was then confirmed subsequent thereto; the telephone data indicates the care with and the extent to which such management and participant relationship was maintained."

[143] Therefore, I do not deem it necessary to individually transverse the evidence of all the witnesses that testified during the trial, for sake of brevity and to avoid unnecessary prolix.

LAW - ACCOMPLICE EVIDENCE/ SECTION 204 WITNESS

[144] The leading case concerning the cautionary rule applicable to the evidence of an accomplice is that of ***R v Ncanana***,[36] where Schreiner JA described accomplices as follows:

[36] 1948 (4) SA 399 (A) at 405.

"…For an accomplice is not merely a witness with a possible motive to tell lies about an innocent accused, but is such a witness peculiarly equipped, by reason of his inside knowledge of the crime, to convince the unwary that his lies are the truth.

[145] Schreiner, JA underlined the need to approach the evidence of an accomplice with caution as referred to above.

[146] In ***S v Hlapezula and Others***[37] Holmes JA said:

"It is well settled that the testimony of an accomplice requires particular scrutiny because of the cumulative effect of the following factors. First, he is a self-confessed criminal. Second, various considerations may lead him falsely to implicate the accused, for example, a desire to shield a culprit or, particularly where he has not been sentenced, the hope of clemency. Third, by reason of his inside knowledge, he has a deceptive facility for convincing description -his only fiction being the substitution of the accused for the culprit. Accordingly .... there has grown up a cautionary rule of practice requiring (a) recognition by the trial court of the foregoing dangers, and (b) the safeguard of some factor reducing the risk of a wrong conviction, such as a corroboration implicating the accused in the commission of the offence, or the absence of gainsaying evidence from him, or his mendacity as a witness, or the implication by the accomplice of someone near or dear to him; see in particular R v Ncanana 1948 (4) 399 (A) at 405 - 406; R v Gumede 1949 (3) SA 749 (A) at 758; R v Nqamtweni and another 1959 (1) SA 849 (A) at 897 G - 898 D. Satisfaction of the cautionary rule does not necessarily warrant a conviction, for the ultimate requirement is proof beyond reasonable doubt, and this depends upon an appraisal of all the evidence and the degree of the safeguard aforementioned."

[147] In the matter of ***R v Nqamtweni and Another***,[38] the Appellate Division held that:

"*The circumstance that the accomplice's evidence incriminates somebody who is near and dear to him is also a factor which may legitimately be regarded as reducing the danger of accepting his evidence."*

[37] 1965 (4) SA 439 (A) at 440D-H.
[38] 1959 (1) SA 894 (A) at 898 C-D.

[148] Mr Motsoane testified and was warned in terms of section 204 in relation to various crimes. It was evident that he was part of the criminal activities in this matter. He stated that on 2 March 2012, he was sentenced at the Pretoria Commercial Crimes Court after pleading guilty on charges relating to the R42 million "Post Bank Heist". He was sentenced to an effective period of 10 years imprisonment. His share from the R42 million, was approximately R500,000.00 (five hundred thousand rand), as there were others involved in the commissioning of the crimes. Mr Motsoane was never arrested on the matter before this court.

[149] Motsoane's evidence placed him, at times, at the periphery, and sometimes, at the centre of criminal activities targeting accounts at the Post Bank and, through forgery and fraud, stealing money therefrom. On his own evidence, both specifically in relation to the first appellant, against whom he testified generally in relation to syndicate activities, he made himself out to be an accomplice.

[150] The court *a quo* was well aware of the dangers pertaining to the evidence of an accomplice and that such must be viewed with extreme caution. The following was said in the judgment:[39]

> *"Accordingly, it is trite his must be viewed with caution. This court must be mindful that Motsoane may have motive to assist the prosecution and relieve himself from further prosecutions or reduce his current sentence of imprisonment and that his own knowledge enables him to present evidence which may appear convincing against others but is merely knowledge acquired in the course of his own activities. I therefore seek for corroboration of the evidence of Motsoane- both generally and particularly as regards the accused whom he seeks to implicate. Where there is general corroboration of Motsoane's evidence, this is of assistance as to his general knowledge only and cannot be conclusive against an individual accused. Where he seeks to give evidence against a particular person, then there must be some other assurance that his evidence is reliable and this court must seek corroboration in other evidence which directly implicates the accused."*

[39] Para 53.

[151] Motsoane's evidence as to the first appellant's involvement, was corroborated by the following independent evidence: Motsoane could not have known;

(a) That the first appellant was arrested and found in possession of the "082" cell phone and that the downloaded data on the sim card revealed the particulars of 6 accounts held at the Post Office.

(b) That the first appellant's "082" and "076" call data would show that he communicated with the Post Office employees and specifically with the employees involved in processing disputed transactions on the day that the transactions occurred.

(c) That the first appellant, after being arrested, would offer to show the Post Office investigators "how to make money out of the Post office" thereby revealing that this was in fact what he was doing.

(d) That the Police would find an SMS on the first appellant's cell phone that indicated that he was involved in stealing money. The SMS read;

"Others say life is unfair well das true others r jealous of us, yes they should b U know Y they work 4 it We steal it MONEY". [*sic*]

(e) It was evident that Motsoane knew the first appellant and communicated with him as corroborated by the call data. During 2010, they communicated on 99 (ninety-nine) occasions using the 076 number and during 2011, they communicated on 16 (sixteen) occasions using the 084 number and on a further 129 (one hundred and twenty-nine) occasions using the 076 number.

(f) That the State would find disputed withdrawals that corresponded to deposits made in the Hlapane account (which deposits Motsoane alleged were his share of the fraudulent withdrawals, because he furnished the account information to the first appellant). Furthermore, that the Hlapane account details were forwarded by the first appellant to the second appellant. The

witness could not have known that the call data would reveal that on days of the disputed withdrawals and deposits in the Hlapane account, the first appellant communicated with the teller that processed the withdrawals and deposits.

(g) That one of those tellers, namely the second appellant, would identify the first appellant to the Post Office investigators, as the person that instigated him to process the disputed transactions.

(h) That Vodacom would discover that the first appellant admitted that the 082- sim card was placed in the same phone as the 076 number, thereby linking him to both these numbers.

(i) That the 076 number communicated with the first appellant's wife and his home phone on 513 (five hundred and thirteen) occasions, thereby again linking the 076 number to first appellant.

(j) That the cell phone analysis would place the first appellant's phones in the vicinity of the Post Offices on the dates and at the times of the disputed withdrawals.

(k) That the method he described as 'generating cash', a process he said the first appellant taught him, would be evident on the Sikhosana withdrawal on 25 April 2009 and the deposit made into the first appellant's Post Office account.

(l) That his evidence regarding the involvement of a Ridgeway teller would be corroborated by Swanepoel, who testified, there was only one teller at the Ridgeway Post Office namely Sibeko, and by the State showing cell phone communication between first appellant and Sibeko. The same applies in connection with the teller at the Henbyl Post Office. Motsoane could not have known that the State found communication between first appellant and the teller.

[152] It is evident, the communication between the appellants showed their interaction with each other.

[153] The court *a quo*, correctly, found that the incriminating evidence indicated that each of the appellants was, to a greater or lesser extent, connected to the racketeering enterprise; that each of them associated himself with its objectives; that together, they were joined by a *common purpose* to promote its aims and objectives and that, through an organized pattern of racketeering activity.

[154] Having perused the record and considered reasons advanced by the court *a quo* in relation to the convictions, I am satisfied that there was no misdirections on the part of the trial court, and consequently the appeal against the convictions stands to be and should be dismissed.

AD SENTENCE

[155] That then brings me to consider whether there is merit in the appellants' appeal against the sentence imposed by the court *a quo*. The powers we have as a court with appellate jurisdiction, are limited in this regard. Sitting as a court of appeal, we can only interfere with the sentence imposed, if the trial court unreasonably or improperly exercised its sentencing discretion primarily entrusted to it, or if the sentence imposed by the court *a quo* is disturbingly disproportionate to the appellants, the gravity of the crime and the interests of justice.[40]

[156] In ***S v Kgosimore***[41]*,* Scott AJ said:

> *"It is trite law that sentence is a matter for the discretion of the court burdened with the task of imposing the sentence. Various tests have been formulated as to when a court of appeal may interfere. These include, whether the reasoning of the trial court is vitiated by misdirection or whether the sentence imposed can be said to be startlingly inappropriate or to induce a sense of shock or whether there is a striking*

[40] *S v Giannoulis* 1975 (4) SA 867 (A).

[41] 1999 (2) SACR 238 (SCA) para 10.

disparity between the sentence imposed and the sentence the court of appeal would have imposed. All these formulations, however, are aimed at determining the same thing; viz whether there was a proper and reasonable exercise of the discretion bestowed upon the court imposing sentence. In the ultimate analysis this is the true inquiry. Either the discretion was properly and reasonably exercised or it was not. If it was, a court of appeal has no power to interfere; if it was not, it is free to do so..."

[157] Furthermore, a court of appeal may not interfere with the discretion of the trial court merely because it would have imposed a different sentence. In ***S v Lungisa***[42] Mabindla-Boqwana AJA said the following:

"…Grounds upon which a court of appeal may interfere with a sentence imposed by a trial court are confined. The approach to be followed by the appellate court when dealing with sentence has been stated in many judgments of this Court. It was aptly summarised in S v Hewitt[43] *as follows:*

'An appellate court may not interfere with [the discretion of the trial court] merely because it would have imposed a different sentence. In other words, it is not enough to conclude that its own choice of penalty would have been an appropriate penalty. Something more is required; it must conclude that its own choice of penalty is the appropriate penalty and that the penalty chosen by the trial court is not. Thus, the appellate court must be satisfied that the trial court committed a misdirection of such a nature, degree and seriousness that shows that it did not exercise its sentencing discretion at all or exercised it improperly or unreasonably when imposing it. So, interference is justified only where there exists a 'striking' or 'startling' or 'disturbing' disparity between the trial court's sentence and that which the appellate court would have imposed. And in such instances the trial court's discretion is regarded as having been unreasonably exercised'…"

[158] It is often said that sentencing is innately controversial. In ***S v Banda and Others***,[44] Friedman J explained that:

"The elements of the triad contain an equilibrium and a tension. A court should, when determining sentence, strive to accomplish and strive at a judicious counter-

[42] 2021 (1) SACR 1 (SCA) para 8.
[43] 2017 (1) SACR 309 (SCA) para 8.
[44] 1991 (2) SA 352 (B) at 355A.

balance between these elements in order to assure that one element is not unduly accentuated at the expense of and to the exclusion of the others. This is not merely a formula nor a judicial incantation, the mere stating whereof satisfies the requirements. What is necessary is that the court shall consider, and try to balance evenly, the nature and circumstances of the offence the characteristics of the offender and his circumstances and the impact of the crime on the community, its welfare and concern..."

[159] It follows from the above, that in seeking to find an appropriate sentence which fits the accused, the court should give sufficient weight to the circumstances in which the crimes were committed with due regard to the interests of the society. The improper exercise of discretion enjoyed by the trial courts can easily result in an unjust sentence, that serves neither the accused nor the society. In exercising its discretion, the trial court must weigh both mitigating and aggravating factors, focused on the nature of the crime, the personal circumstances of the offender and the interests of society.

[160] The appellants have been convicted and sentenced on various charges in terms of POCA, namely racketeering, theft, forgery, money laundering and corruption, amongst others. Some of the charges of theft attracted the imposition of minimum sentences in terms of the Criminal Law Amendment Act 105 of 1997.

[161] The appellants participated in a criminal enterprise which preyed upon accountholders at the South African Post Office. The enterprise obtained information regarding account holders' accounts, amount of money available in the said accounts, forged identity documents and passports. They also obtained false bank cards. These forged documents were presented at different Post Office branches and with the assistance of tellers and employees of Post Bank, monies were withdrawn from the targeted Post Bank accounts.

[162] Judging from the penalties ordained for a contravention of the provisions of section 2(1) of POCA, it is clear that racketeering activities or organised crime is viewed in a very serious light. The seriousness of the offences in this matter

is evident. In ***National Director of Public Prosecutions and Another v Mohamed N.O and Others***,[45] Ackerman J said the following:

> *"[14] The Act's overall purpose can be gathered from its long title and preamble and summarised as follows: The rapid growth of organised crime, money laundering, criminal gang activities and racketeering threatens the rights of all in the Republic, presents a danger to public order, safety and stability, and threatens economic stability. This is also a serious international problem and has been identified as an international security threat. South African common and statutory law fail to deal adequately with this problem, because of its rapid escalation and because it is often impossible to bring the leaders of organised crime to book, in view of the fact that they invariably ensure that they are far removed from the overt criminal activity involved. The law has also failed to keep pace with international measures aimed at dealing effectively with organised crime, money laundering and criminal gang activities. Hence the need for the measures embodied in the Act.*
>
> *[15] It is common cause that conventional criminal penalties are inadequate as measures of deterrence when organised crime leaders are able to retain the considerable gains derived from organised crime, even on those occasions when they are brought to justice. The above problems make a severe impact on the young South African democracy, where resources are strained to meet urgent and extensive human needs..."*

[163] In ***S v Jwara and Others***,[46] the appellants were convicted on numerous charges involving drugs and also of contravening section 2(1)(d) of POCA. They were sentenced to 25 (twenty-five), 22 (twenty-two) and 20 (twenty) years imprisonment respectively. They were also unsuccessful in their bid to appeal against their sentences imposed.

[164] In the matter of ***S v Ndebele and Others***,[47] on a conviction in terms of section 2(1)(e) and (f) of POCA, the accused were sentenced to terms of imprisonment ranging between 18 (eighteen) and 15 (fifteen) years imprisonment.

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[45] 2002 (4) SA 843 CC.
[46] 2015 (2) SACR 525 (SCA).
[47] 2012 (1) SACR 245 (GSJ).

[165] The court *a quo* considered the following personal circumstances of the appellants.

[166] Mr Isaac Ditlhakanye, the first appellant, was 40 (forty) years old, born on 29 October 1975. He completed Gr 12. He was married and has three children. Prior to his arrest, he was self-employed. In 1998 he was convicted of fraud and sentenced to a fine or imprisonment and because the offence was committed ten years prior to the conviction in this matter, the first appellant was treated as a first offender.

[167] **The first appellant was sentenced as follows:**

(a) Count 1: Contravening section 2(1)(f) of POCA: Managing an Enterprise -30 (thirty) years imprisonment.

(b) Count 2: Contravening section 2(1)(e) of POCA: Conducting an Enterprise through a pattern of Racketeering Activity – 20 (twenty) years imprisonment. In terms of section 280 of the CPA, it was ordered that the 10 years imprisonment imposed on count 2 to run concurrently with the term of imprisonment imposed on count 1. Thus, in respect of count 1 and 2, an effective term of 40 (forty) years imprisonment was imposed.

(c) Counts 4, 7, 9, 11, 13, 15, 35, 37, 39, 41, 47, 49, 52, 56, 59, 62, 65, 68, 71, 75, 77 and 82: Theft: 10 (ten) years imprisonment on each count. In terms of section 280 of the CPA, the imprisonment imposed on all these counts to run concurrently with each other and with the imprisonment imposed on count 1.

(d) Counts 16, 30, 32, 43, 45 and 73: Theft: In terms section 51(2) of the CLAA: 15 (fifteen) years imprisonment on each count. In terms of section 280 of the CPA, it was ordered that the terms of imprisonment imposed on counts 16, 30, 32, 43, 45 and 73 to run concurrently. Furthermore, 10 (ten) years imprisonment on these counts are to run concurrently with the imprisonment imposed on count 1.

(e) Count 18-29: Contravening section 4(b)(i) of POCA: Money Laundering: 5 (five) years imprisonment on each count. In terms of section 280 of the CPA, the terms of imprisonment in respect of these counts to run concurrently with each other and with the sentence imposed in respect of count 1.

(f) Count 81 and 83: Attempted Theft: 10 (ten) years imprisonment on each count. In terms of section 280 of the CPA, the terms of imprisonment imposed on counts 81 and 83 to run concurrently with each other and with the imprisonment imposed on count 1.

(g) Count 85: Fraud: 5 (five) years imprisonment. In terms of section 280 of the CPA, the term of imprisonment imposed on count 85 to run concurrently with the term of imprisonment imposed on count 1.

(h) Count 86 - 114: Forgery: 3 (three) years imprisonment on each count. In terms of section 280 of the CPA, the terms of imprisonment imposed on all these counts to run concurrently with each other and with the term of imprisonment imposed on count 1.

(i) Count 115: Corruption: 5 (five) years imprisonment.

(j) Count 116: Contravening section 51(1) of the CPA: Attempting to Escape from Custody: 4 (four) years imprisonment. In terms of section 280 of the CPA, the term of imprisonment imposed on count 116 to run concurrently the imprisonment imposed on count 115.

[168] The first appellant was sentenced to 541 (five hundred and forty-one) years imprisonment. The court *a quo* considered the cumulative effect of the sentences imposed and ordered the terms of imprisonment on certain counts to run concurrently and as a result, the first appellant was sentenced to an effective term of 50 (fifty) years imprisonment.

[169] Mr Thabang Samson Motaung, the second appellant, was 39 (thirty-nine) years old. He attended school in Qwa Qwa where he passed grade 12. He

completed his National Diploma in Technology. During 2002 to 2004, he was employed as a lecturer at IBIS Tec Braamfontein, Gauteng. In 2005, he worked for Speed Services for a year. He left his employment at Speed Services and joined Iwisa Premium Food Company in Isando, where he was employed as Merchandise Manager. In 2007, he joined Maxi Wall, where he was employed as a site manager. In 2008, he joined the South African Post Office, Randburg, as a teller. He was transferred to Pinegowrie Post Office, where he worked as a teller and at times, was appointed as acting Branch Manager. He was arrested on this matter on 1 June 2011 and his employment was terminated in December 2013 due to his involvement in this matter. He was the sole breadwinner of his family.

[170] He was married and the father of one minor child, aged 8 (eight). He was a first offender. The second appellant showed remorse, which was confirmed by the fact that he offered that his pension savings could be paid as compensation to the South African Post Office and/or the complainants for the losses incurred. He also suffers from hypertension and was on chronic medication. He was not a danger to society. Mr Motaung stated that during his incarceration, he lost his brother and mother and was unable to attend their funerals.

[171] **The second appellant was sentenced as follows:**

(a) Count 2: Contravening section 2(1)(e) of POCA: Conducting an Enterprise through a Pattern of Racketeering Activity: 20 (twenty) years imprisonment.

(b) Count 26, 28 and 29: Contravening section 4(6)(i) of POCA: Money Laundering: 5 (five) years imprisonment.

(c) Count 73: Theft: In terms of section 51(2) of the CLAA, 18 (eighteen) years imprisonment.

(d) Counts 49, 52, 56, 59, 65, 68, 71, 75 and 77: Theft: 10 (ten) years imprisonment.

(e) Count 85: Fraud: 10 (ten) years imprisonment.

(f) In terms of section 280 of the CPA, the terms of imprisonment imposed on count 26, 28. 29, 49, 52, 56, 59, 65, 68, 71, 75, 77 and 85 to run concurrently with the term of imprisonment imposed on count 2.

[172] The court *a quo* sentenced the second appellant on count 7, theft, to a term of 10 (ten) years imprisonment which was ordered to run concurrently with the term of imprisonment imposed on count 2. However, the second appellant was not found guilty on count 7.

[173] The second appellant was sentenced to 153 (one hundred and fifty-three) years imprisonment. The court *a quo* considered the cumulative effect of the sentences imposed and ordered the terms of imprisonment on certain counts to run concurrently and as a result, the second appellant was sentenced to an effective term of 28 (twenty eight) years imprisonment.

[174] It is clear that the court *a quo* made a calculation error in stating that the effective term of imprisonment imposed was 28 (twenty-eight) years. In truth and in fact, on proper re-calculating the term of imprisonment imposed upon the second appellant, an effective term of 38 (thirty- eight) years imprisonment was imposed.

[175] Mr Holynswoth Mkhwane, the third appellant, was 38 (thirty-eight) years old. He attended school and obtained his grade 11 certificate. He was not married, but he is the father of one minor child, aged 8 (eight). Prior to his arrest, the child was residing with him and following his arrest, the child then resided with his biological mother. Prior to his arrest, he was employed at the South African Post Office. He had no previous convictions.

[176] **The third appellant was sentenced as follows:**

a) Count 2: Contravening section 2(1)(e) of POCA: Conducting an Enterprise through a Pattern of Racketeering Activity: 20 (twenty) years imprisonment.

b) Count 39, 59 and 65: Theft: 10 (ten) years imprisonment imposed on each count. In terms of section 280 of the CPA, it was ordered that the terms of imprisonment imposed on counts 39, 59 and 65 to run concurrently with each other and with the term of imprisonment imposed on count 2.

c) Count 43 and 45: Theft: In terms of section 51(2) of the CLAA, 18 (eighteen) years imprisonment on each count. In terms of section 280 of the CPA, it was ordered that the terms of imprisonment imposed on counts 43 and 45 to run concurrently with each other and that 10 (ten) years imprisonment imposed on count 43 and 45 to run concurrently with the term of imprisonment imposed on count 2.

[177] The third appellant was sentenced to 86 (eighty-six) years imprisonment. The court *a quo* considered the cumulative effect of the sentences imposed and ordered the terms of imprisonment on certain counts to run concurrently and as a result, the third appellant was sentenced to an effective of 28 (twenty-eight) years imprisonment.

[178] Ms Kedibone Sylvia Mkhwane, the fourth appellant, was 39 (thirty-nine) years old, born on 17 July 1975. Due to her father abandoning her mother and siblings, she grew up in the care of her uncle in Koppies, Free State. She attended school in Koppies until 1990, whereafter, she returned to live with her mother in Johannesburg. She obtained her grade 12 certificate in 1995. She completed her NTXC 3-6 and was employed at the South African Post Office since 2004 until her arrest, whereafter she was dismissed from her employment. At the time of the commissioning of the crimes, she was employed as a teller, and at times, acted as branch manager. She was appointed as branch manager at Kelvin Post Office at the time of her arrest.

[179] She was married but in 1985, she and her husband separated. She was the mother of one minor child, S[…], aged 14 (fourteen). He son was born on 30 June 2000. Prior to her arrest, S[…] was residing with her and she was his

primary care giver. On 21 May 2011 Sabelo was hit by a vehicle and he broke both his legs. As a result of her arrest on 2 June 2011, she was unable to visit him in hospital until his discharge in December 2011. Following her arrest, the minor child was struggling to cope as he was moved between different family members for support and care. The father of the minor child was unemployed and not in a position to financially support the child. Prior to her arrest, she was the sole breadwinner. Her mother passed away in 1998 after being diagnosed with cancer. As a result of her incarceration, S[…] was suffering tremendously. He visited her a few times in prison, but as time passed, he refused to visit her because he was emotional and cried during visits.

[180] Ms Mkhwane had a constant employment record and joined the South African Post Office in 2004 as part of a learnership programme. She completed her practical training at Kliptown Post Office and her theory training at Lenasia and Roodepoort Post Offices. In 2006, she was appointed as a teller until 2008, when she was permanently appointed at North Riding Post Office. In May 2011, she was appointed as branch manager at Kelvin Post Office. She showed remorse and her pension savings were attached by the South African Post Office for the losses suffered due to her criminal conduct. The amount relating to her involvement in the criminal scheme was R123,100.00 (one hundred and twenty three thousand one hundred rand). She had no previous convictions and was a first offender.

[181] **The fourth appellant was sentenced as follows:**

(a) Count 2: Contravening section 2(1)(e) of POCA: Conducting an Enterprise through a Pattern of Racketeering Activity: 22 (twenty-two) years imprisonment.

(b) Count 43, 45 and 73: Theft: In terms of section 51(2) of the CLAA: 18 (eighteen) years imprisonment on each count. In terms of section 280 of the CPA, it was ordered that the terms of imprisonment imposed on counts 43, 45 and 73 to run concurrently with each other and that 10 (ten) years

imprisonment imposed on these counts to run concurrently with the term of imprisonment imposed on count 2.

(c) Count 52: Theft: 10 (ten) years imprisonment. In terms of section 280 of the CPA, the term of imprisonment imposed on count 52 was ordered to run concurrently with the term of imprisonment imposed on count 2.

[182] The fourth appellant was sentenced to 86 (eighty six) years imprisonment. The court *a quo* considered the cumulative effect of the sentences imposed and ordered the terms of imprisonment on certain counts to run concurrently and as a result, the fourth appellant was sentenced to an effective term 30 (thirty) years imprisonment.

[183] Ms Laura Kunene, the firth appellant, was 48 (forty-eight) years old. She obtained her grade 12 certificate at Orlando High School, Soweto. She was not married and has two children, ages 27 and 20. Her eldest child is unemployed and residing with her. Her 20 year old son was residing with his biological father, attending school. She had no previous convictions and was a first offender. At the time of her arrest, she was employed at the South African Post Office. She stated that she suffered emotionally due to her incarceration, her health has deteriorated and she suffered from depression.

[184] **The fifth appellant was sentenced as follows:**

(a) Count 2: Contravening section 2(1)(e) of POCA: Conducting an Enterprise through a Pattern of Racketeering Activity: 20 (twenty) years imprisonment.

(b) Count 27: Contravening section 4(6)(i) of POCA: Money Laundering: 5 (five) years imprisonment. In terms of section 280 of the CPA, the term of imprisonment imposed on count 27 ordered to run concurrently with the term of imprisonment imposed on count 2.

(c) Counts 45 and 73: Theft: In terms of section 51(2) the CLAA: 18 (eighteen) years imprisonment on each count. In terms of section 280 of the CPA, it was

ordered that the terms of imprisonment imposed on counts 45 and 73 to run concurrently with each other and that 10 (ten) years imprisonment imposed on these counts to run concurrently with the term of imprisonment imposed on count 2.

(d) Count 47, 49, 59, 62, 65, 75 and 81: Theft: 10 (ten) years imprisonment on each count. In terms of section 280 of the CPA, the terms of imprisonment imposed on these counts to run concurrently with each other and with the term of imprisonment imposed on count 2.

(e) Count 83: Attempted Theft:10 (ten) years imprisonment. In terms of section 280 of the CPA, the terms of imprisonment imposed on this count to run concurrently with the terms of imprisonment imposed on count 47, 49, 59, 62, 65, 75 and 81 and with the term of imprisonment imposed on count 2.

[185] The fifth appellant was sentenced to 141 (one hundred and forty-one) years imprisonment. The court *a quo* considered the cumulative effect of the sentences imposed and ordered the terms of imprisonment on certain counts to run concurrently and as a result, the fifth appellant was sentenced to an effective term of 28 (twenty-eight) years imprisonment.

[186] Ms Vuyokazi Mcence, the sixth appellant, was born on 26 November 1974 and was 40 (forty) years of age. She grew up in the care of her mother and father. Her mother was employed as a domestic worker and was diagnosed with cancer. Her father was employed by the South African Police Services and he retired in 2000. Her father passed away on 2 November 2013 while she was in custody, awaiting trial. Due to her incarceration, she was unable to attend her father's funeral and to support her mother emotionally during the death of her father. Three of her siblings have passed away, respectively, in 2002 and 2007.

[187] She attended school and obtained her grade 12 certificate in 1993. From 1996 until 2002, she was employed at Bitz Pos as a mail processor and in 2002, she was transferred to the Johannesburg International Mail Centre in Jetpark,

Johannesburg. In November 2005, she was transferred to North Riding Post Office where she was employed as a teller. She received further training as teller at Pinegowrie Post Office and in March 2008, she was permanently appointed as a teller at Randburg Post Office until her arrest on 2 June 2011.

[188] She was married and has two minor children, a daughter born on 19 October 1996, and a son born on 2 May 2007. Her husband visited her regularly in prison until 2013. In 2014, she was served with a summons for divorce. She received no further information as to whether a divorce order was granted. However, she was informed, that another woman and her son had moved into the matrimonial home and were residing with her husband. Her minor children were left in the care of their maternal grandmother. They were struggling emotionally. Her mother was unable to financially provide for them and as a result, she struggled to make ends meet. On two occasions, in 2013 and 2014, her minor son was removed from her mother's care. He was residing with his paternal grandmother since 2014. The minor children found themselves in unstable circumstances as they were moved among family members. Her arrest impacted negatively on the minor children's performance at school.

[189] Ms Mcence has no previous convictions and was a first offender. She was informed that her pension savings would be paid over to the South African Post Office for the losses incurred due to her criminal conduct. Her involvement in the crimes amounted to an amount of R19,000.00 (nineteen thousand rand).

[190] **The sixth appellant was sentenced as follows:**

(a) Count 2: Contravening section 2(1)(e) of POCA Conducting an Enterprise through a Pattern of Racketeering Activity: 20 (twenty) years imprisonment.

(b) Count 56 and 59: Theft: 10 (ten) years imprisonment on each count. In terms of section 280 of the CPA, it was ordered that the terms of imprisonment imposed on count 56 and 59 to run concurrently with each other and the term of imprisonment imposed on count 2.

(c) Count 73: Theft: In terms of section 51(2) of the CLAA: 18 (eighteen) years imprisonment. In terms of section 280 of the CPA, it was ordered that 10 (Ten) years imprisonment imposed on count 73 to run concurrently with the term of imprisonment imposed on count 2.

[191] The sixth appellant was sentenced to 58 (fifty-eight) years imprisonment. The court *a quo* considered the cumulative effect of the sentences imposed and ordered the terms of imprisonment on certain counts to run concurrently and as a result, the sixth appellant was sentenced to an effective term of imprisonment of 28 (twenty-eight) years imprisonment.

[192] Mr Jack Leseja Kekana, the seventh appellant, was 42 (forty-two) years old. He attended school and obtained his grade 12 certificate in 1992. During 1995 to 1997, he studied Practical Philosophy at Funda Centre College in Diepkloof. Due to financial constraints, he did not complete the course. He was married and the father of two minor children, girls aged 10 (ten) and 6 (six). His wife relocated to her parents in Tshwane and during 2011, she earned R2,500.00 (two thousand five hundred rand) per month.

[193] Since 1996, he was employed by the South African Post Office, until his arrest on 1 June 2011. He was employed as a teller at Alexandra South Post Office. In September 2013, he was dismissed from his employment. He did not receive his pension savings which amounted to approximately R328,000.00 (three hundred and twenty-eight thousand rand).

[194] Mr Kekana and the third appellant were in solitary confinement since 18 December 2012, due to a rumour that they wanted to escape, which in itself was extremely stressful and traumatic. He had no previous convictions and was a first offender.

[195] **The seventh appellant was sentenced as follows:**

(a) Count 2: Contravening section 2(1)(e) of POCA: Conducting an Enterprise through a Pattern of Racketeering Activity: 20 (twenty) years imprisonment.

(b) Count 22 and 25: Contravening section 4(6)(i) of POCA: Money Laundering: 5 (five) years imprisonment. In terms of section 280 of the CPA, the terms of imprisonment imposed on counts 22 and 25 to run concurrently with each other and also with the term of imprisonment imposed on count 2.

(c) Count 43 and 73: Theft: In terms of section 51(2) of the CLAA, 18 (eighteen) years imprisonment on each count. In terms of section 280 of the CPA, it was ordered that the terms of imprisonment imposed on counts 43 and 73 to run concurrently with each and that 10 (ten) years imprisonment imposed on these counts to run concurrently with the term of imprisonment imposed on count 2.

(d) Counts 52, 56, 59, 62, 65, 75, and 82: Theft:10 (ten) years imprisonment on each count. In terms of section 280 of the CPA, the terms of imprisonment imposed on all these counts ordered to run concurrently with each other and also with the term of imprisonment imposed on count 2.

[196] The seventh appellant was sentenced to 136 (one hundred and thirty-six) years imprisonment. The court *a quo* considered the cumulative effect of the sentences imposed and ordered the terms of imprisonment on certain counts to run concurrently and as a result, the seventh appellant was sentenced to an effective term of 28 (twenty-eight) years imprisonment.

[197] Mr Karabo Louis Molefe, the eighth appellant, was 40 (forty) years old. He attended school and passed grade 12. After which he enrolled for a Diploma in Computer Literacy. He was married and has four children, aged 21 (twenty-one), 16 (sixteen), 13 (thirteen) and 8 (eight). The children were residing with their biological mother in Soweto.

[198] He was employed at the South African Post Office for a period of 11 (eleven) years. At the time of his arrest, he was a branch manager and earning R14,000.00 (fourteen thousand rand) per month. He had no previous convictions or pending cases against him.

[199] On 23 July 2010, the eighth appellant was dismissed from his employment at the SAPO, after a disciplinary hearing relating to misconduct. He approached the CCMA and the dismissal was set aside and his employment was re-instated on 17 January 2011. Notwithstanding being dismissed, he participated in this enterprise, which is of a great concern.

[200] **The eighth appellant was sentenced as follows:**

(a) Count 2: Contravening section 2(1)(e) of POCA: Conducting an Enterprise through a Pattern of Racketeering Activity: 22 (twenty-two) years imprisonment.

(b) Count 4, 7, 9, 35, 59 and 75: Theft: 10 (ten) years imprisonment on each count. In terms of section 280 of the CPA, the terms of imprisonment imposed on these counts to run concurrently with each other and with the term of imprisonment imposed on count 2.

(c) Count 16, 30 and 32: Theft: In terms of section 51(2) of the CLAA: 18 (eighteen) years imprisonment on each count. In terms of section 280 of the CPA, it was ordered that the terms of imprisonment imposed on counts 16, 30 and 32 to run concurrently with each other and 10 (ten) years imprisonment imposed on these counts to run concurrently with the term of imprisonment imposed on count 2.

(d) Count 19 and 20: Contravening section 4(6)(i) of POCA: Money Laundering: 5 (five) years imprisonment on each count. In terms of section 280 of the CPA, the terms of imprisonment imposed on these counts to run concurrently with each other and the term of imprisonment imposed on count 2.

(e) Count 85: Fraud: 10 (ten) years imprisonment. In terms of section 280 of the CPA, the term of imprisonment imposed on count 85 to run concurrently with the term of imprisonment imposed on count 2.

[201] The eighth appellant was sentenced to 146 (one hundred and forty-six) years imprisonment. The court *a quo* considered the cumulative effect of the sentences imposed and ordered the terms of imprisonment on certain counts to run concurrently and as a result, the eighth appellant was sentenced to an effective term of 30 (thirty) years imprisonment.

[202] Mr Thabo Bradley Makenete, the ninth appellant, was born on 21 June 1966 and was 48 (forty-eight) years old. He and his siblings grew up in the care of his mother and father. His father was an accountant and died at the age of 66 (sixty-six) in 2009. His mother was a teacher at St Peter Clever Primary School in Soweto. She was 70 (seventy) years old and experiencing health issues at the time of his sentence. He also experienced health challenges as he suffered from chronic sinusitis and bronchitis and as a result thereof, he developed asthma. He also suffered from hypertension.

[203] He attended school in Soweto and while he was in Grade 10, he left because he was struggling and not coping in school. He worked on a casual basis at Robertson Spices in Alberton. During 1997 to 2003, he transported children to school and also sold clothing in order to generate an income. He was arrested on 25 February 2013 on this matter.

[204] He was not married, but in a relationship with Ms Pearl Ngobeni. Out of the relationship, two children were born. L[…] , the firstborn, was born on 23 August 1988. She has two children of her own, a boy of 6 (six) and an infant. His last born, T[…], was born on 27 October 1999 and was attending school.

[205] He had a previous conviction of fraud and was sentenced in 1999 to a fine of R1,000.00 (one thousand rand) or 50 (fifty) days imprisonment and a further 18 (eighteen) months' imprisonment was suspended for a period of 5 (five) years on certain conditions.

[206] **The ninth appellant was sentenced as follows:**

(a) Count 2: Contravening section 2(1)(e) of POCA: Conducting an Enterprise through a Pattern of Racketeering Activity: 22 (twenty-two) years imprisonment.

(b) Count 21, 25, 26 and 27: Contravening section 4(6)(i) of POCA: Money Laundering: 3 (three) years imprisonment on each count. In terms of section 280 of the CPA, it was ordered that the terms of imprisonment imposed on these counts to run concurrently with the term of imprisonment imposed on count 2.

(c) Count 37, 47, 49, 52, 56, 59, 62, 65 and 75: Theft: 10 (ten) years imprisonment on each count. In terms of section 280 of the CPA, it was ordered that the terms of imprisonment imposed on these counts to run concurrently with each other and with term of imprisonment imposed on count 2.

(d) Count 43, 45 and 73:Theft: In terms of section 51(2) of the CLAA: 18 (eighteen) years imprisonment on each count. In terms of section 280 of the CPA, it was ordered that the terms of imprisonment imposed on counts 43, 45 and 73 to run concurrently with each other and that 10 (ten) years imprisonment imposed on these counts to run concurrently with the term of imprisonment imposed on count 2.

(e) Count 83: Attempted Theft: 10 (ten) years imprisonment on each count. In terms of section 280 of the CPA, it was ordered that the term of imprisonment imposed on count 83 to run concurrently with the term of imprisonment imposed on count 37, 47, 49, 52, 56, 59, 62, 65, 75 and with the term imprisonment imposed on count 2.

(f) Count 86 - 114: Forgery: 3 (three) years imprisonment on each count. In terms of section 280 of the CPA, it was ordered that the terms of imprisonment imposed on all these counts to run concurrently with the term of imprisonment imposed on count 2.

[207] The ninth appellant was sentenced to 282 (two hundred and eighty-two) years imprisonment. The court *a quo* considered the cumulative effect of the sentences imposed and ordered that the terms of imprisonment on certain counts to run concurrently and as a result, the ninth appellant was sentenced to an effective term of 30 (thirty) years imprisonment.

CONCLUSION

[208] The court *a quo* reasoned, correctly so, that the charges against the appellants warranted a period of long term imprisonment. Nevertheless, the effective sentences are tantamount to imposing a sentence on the appellants which has the effect of removing them permanently from society. The appellants would be released after serving their respective sentences at the following ages;

(a) the first appellant- 90 (ninety),

(b) the second appellant- 67 (sixty-seven),

(c) the third appellant – 66 (sixty-six),

(d) the fourth appellant- 69 (sixty-nine),

(e) the fifth appellant- 76 (seventy-six),

(f) the sixth appellant- 68 (sixty-eight),

(g) the seventh and eight appellants- 70 (seventy), and

(h) the ninth appellant – 78 (seventy-eight).

[209] In other words, the sentences imposed on the appellants have the potential of being more onerous than life imprisonment. Normally, multiple sentences of

imprisonment are served one after the other, unless the court directs otherwise.[48] Section 280(1) and (2) of the CPA provides the following:

"(1) When a person is at any trial convicted of two or more offences or when a person under sentence or undergoing sentence is convicted of another offence, the court may sentence him to such several punishments for such offences or, as the case may be, to the punishment for such other offence, as the court is competent to impose.

2) Such punishments, when consisting of imprisonment, shall commence the one after the expiration, setting aside or remission of the other, in such order as the court may direct, unless the court directs that such sentences of imprisonment shall run concurrently."

[210] The sentences imposed are in effect far worse than life imprisonment, as, in terms of section 73(6) of the Correctional Services Act,[49] a person sentenced to life imprisonment may qualify for parole after 25 (twenty-five) years' imprisonment.

[211] Sentencing is the most difficult part of a criminal trial, especially where there are multiple charges and the trial court has to consider the cumulative effect of sentences. Reference to prior decided cases on sentence is a useful tool to assist a court in deciding on an appropriate sentence. In the final analysis, each case must be decided on its own merits. Needless to say, no two cases are the same. An appellate court will therefore interfere with a sentence of a court *a quo* in instances where there is a striking disparity between what it determined as an appropriate sentence and what the appellate court considers ought to have been an appropriate sentence.

[212] In the present case, this court has a clear and definite view that it would not have imposed a cumulative sentence of this magnitude, as it has the potential

[48] See section 39(2)(a) of the Correctional Service Act 111 of 1998 and *S v Coetzer* 2006 (2) SACR 63 (SCA).
[49] Act 11 of 1998.

of being more onerous than life imprisonment. On that basis, this court is at liberty to interfere and reconsider the cumulative effect of the sentences.

[213] The court *a quo* considered all the factors relevant to sentencing. The personal circumstances of each individual offender, the gravity of the crimes committed and the interests of the community. The period of 4 (four) years spent in custody as awaiting trial prisoners, was also considered. This period spent in custody awaiting trial, should, like all other mitigating factors, be taken into consideration in determining what an appropriate sentence, in the particular case, should be. In ***S v Radebe and Another,***[50] the court said:

> *"(14) A better approach in my view is that the period in detention pre-sentencing is but one of the factors that should be taken into account in determining whether the effective period of imprisonment to be imposed is justified..."*

[214] The mitigating facts in this matter, are that the appellants were first offenders.[51] Being a first-time offender does not mean that such a fact should override all the other principles to be considered during the sentencing process. First-time offenders are therefore not entitled to non-custodial sentences, merely because they are first-time offenders.[52]

[215] The court has to consider the fact that the appellants, employed at the SAPO, lost their pension savings accumulated, as a result of their criminal conduct. Furthermore, their convictions will no doubt impact heavily on their ability to secure employment when released from prison.

[216] The aggravating facts are that the appellants were found guilty of racketeering and money laundering, which are very serious crimes. Racketeering is indeed a complex crime and as the facts in the current instance show, it involved group activity in which the appellants played a major role in the running of the enterprise. The facts indicate that the enterprise operation was planned, ongoing and continuous and that the enterprise stretched over a period of approximately three years, until the appellants were arrested. It is evident that

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[50] 2013 (2) SACR 165 (SCA) para 14.
[51] *S v Van Wyk* 1997(1) SACR 345 (T) at 366G-H, *S v Voges* 1975 (3) SA 888 (NC) at 890E *and S v Abt* 1975 (3) SA 214 (A) at 219H.
[52] *S v Victor* 1970 (1) SA 427 (A) at 429C-D.

the first and ninth appellants were the masterminds behind the criminal enterprise, this fact was emphasised by the court *a quo* in its judgment.

[217] Heavy sentences for racketeering can mostly be expected from courts in view thereof that the criminal conduct of participants originate from their organised involvement in the enterprise, which is regarded as more reprehensible and damaging to a society than a person who yields to temptation to commit crime.

[218] Evident from the facts is that the crimes were committed out of greed. The accounts targeted were that of less fortunate and/or elderly people, who invested their life savings or pensions in accounts at the SAPO. The complainants, in some of the charges, had difficulty in finding transport to the Post Office. Furthermore, on their subsequent arrival at the Post Office, they were informed that their accounts were depleted. They were humiliated in being interrogated about the disappearance of their savings in their accounts. The emotional and physical distress experienced must have been immense.

[219] During the commissioning of the crimes, the second, third, fourth, fifth, sixth, seventh and eighth appellants were employed by the SAPO. They were in a position of trust and they played a central role in obtaining information regarding the accounts raided and the execution of the withdrawals from the accounts. It would not have been possible for the syndicate to execute their plans if it were for them and they can accordingly, not claim diminished moral responsibility.

[220] The fourth and sixth appellants are mothers and primary care givers of their minor children. Evident from the facts on record, these minor children are under extreme emotional and financial distress. The minor children are experiencing unstable living and financial security. After the arrest of the fourth appellant, her minor son was involved in an accident and hospitalized and following his discharge, he resided with his maternal grandmother. The two minor children of the sixth appellant were abandoned by their biological father following her incarceration. Her son is currently residing with his parental

grandparents and her daughter with the maternal grandmother. These children did not only lose their mother, but their father as well.

[221] Section 28(2) of the Constitution provides that;

> *"[a] child's best interests are of paramount importance in every matter concerning the child."*

[222] Regarding an appropriate sentence to be imposed on the fourth and sixth appellants, the court must apply its mind to whether it is necessary to take steps to ensure that the minor children would be adequately cared for while the caregiver is incarcerated. The tension lies between maintaining family care, wherever possible, on the one hand, and the duty on the State to deal firmly with criminal misconduct, on the other.[53] It is of importance that the court considers that long term imprisonment would profoundly impact on the emotional wellbeing of the children being torn from their mothers. Children are innocent of the crime committed by their caregivers. We have to pay appropriate attention to the minor children and as such, take reasonable steps to minimise emotional damage inflicted due to the incarceration of a primary caregiver.

[223] However, this court has to consider the fact that during the sentencing phase, the court *a quo* was not provided with pre-sentencing reports regarding what the impact of direct imprisonment on the minor children of the fourth and sixth appellants would be, which is regretful and unfortunate. Given the seriousness of the offences involved, the only appropriate sentence is direct imprisonment, however the term of imprisonment must be considered in accordance with section 28 of the Constitution.

[224] The appellants' conduct, after they had been arrested, is, in my view, an important consideration in deciding as to the degree of remorse demonstrated. They pleaded not guilty in the matter, which is their constitutional right. The first, second and ninth appellants did not testify in their defence. None of the

[53] *S v M (Centre for Child Law as Amicus Curiae)* 2008 (3) SA 232 (CC).

appellants took the court in their confidence and admitted to the wrongs they have committed, which is a factor to consider when deciding on whether the appellants can be rehabilitated outside of prison.

[225] Mr Motsoane, the section 204 witness, testified in the matter. He had internal knowledge as to the inner workings of the enterprise. Following his arrest, he pleaded guilty to charges relating to the "R42 million Post Bank Heist". On 2 March 2012, he was sentenced at the Pretoria Commercial Crimes Court to an effective period of 10 (ten) years imprisonment.

[226] Mr Boy Thekiso, another role player in the enterprise, also pleaded guilty during September 2012 on various charges involving the so called "Post Office Heist", he was sentenced to 10 (ten) years imprisonment. This is an important factor to consider in this matter as it is trite that sentences for the same crimes must be consistent and balanced.

[227] In considering the sentences, we are constrained to bear in mind that the offences with which the appellants had been convicted are very serious indeed. These types of crimes have far-reaching consequences for the economy and the public, and courts must impose sentences that reflect the serious nature of the crimes.

[228] Nevertheless, punishment should not be meted out in spasms of indignation, but must be spiced with mercy and, while reflecting the serious nature of the crimes, and the interests of society, must also make allowance for the reasonable possibility of the appellants being rehabilitated and once again becoming valuable members of society.

[229] Having considered all the above-mentioned factors, we are of the view that the sentences imposed by the trial court must be interfered with.

ORDER

[230] In all the circumstances, the following order is made:

1. The appellants' appeal against the convictions is dismissed.
2. The appeal succeeds only in regard to the sentences imposed, the sentences imposed by the court *a quo* are aside and replaced with the following:

[231] **FIRST APPELLANT:**

1) Count 1: Contravening section 2(1)(f) of POCA: Managing an Enterprise – 30 (thirty) years imprisonment.

2) Count 2: Contravening section 2(1)(e) of POCA: Conducting an Enterprise through a pattern of Racketeering Activity – 20 (twenty) years imprisonment. In terms of section 280 of the CPA, it is ordered that 10 (ten) years imprisonment imposed on count 2, to run concurrently with the sentence imposed on count 1. Thus, in respect of count 1 and 2, an effective term of 40 (forty) years imprisonment is imposed.

3) Counts 4, 7, 9, 11, 13, 15, 35, 37, 39, 41, 47, 49, 52, 56, 59, 62, 65, 68, 71, 75, 77 and 82: Theft: 10 (ten) years imprisonment on each count. In terms of section 280 of the CPA, the terms of imprisonment imposed on all these counts to run concurrently with each other and with the sentence imposed on count 1.

4) Counts 16, 30, 32, 43, 45 and 73: Theft: In terms section 51(2) of the CLAA: 15 (fifteen) years imprisonment on each count. <u>In terms of section 280 of the CPA, the imprisonment imposed on all the counts ordered to run concurrently with the sentence imposed on count 1.</u>

5) Count 18-29: Contravening section 4(b)(i) of POCA: Money Laundering: 5 (five) years imprisonment on each count. In terms of section 280 of the CPA, the terms of imprisonment in respect of these counts to run concurrently with each other and with the sentence imposed on count 1.

6) Count 81 and 83: Attempted Theft: 10 (ten) years imprisonment on each count. In terms of section 280 of the CPA, the terms of imprisonment imposed on these counts to run concurrently with each other and with the sentence imposed on count 1.

7) Count 85: Fraud: 5 (five) years imprisonment. In terms of section 280 of the CPA, the term of imprisonment imposed on count 85 to run concurrently with the sentence imposed on count 1.

8) Count 86 - 114: Forgery: 3 (three) years imprisonment on each count. In terms of section 280 of the CPA, the terms of imprisonment imposed on these counts to run concurrently with each other and with the sentence imposed on count 1.

9) Count 115: Corruption: 5 (five) years imprisonment. In terms of section 280 of the CPA, the terms of imprisonment imposed on count 115 to run concurrently with the sentence imposed on count 1.

10) Count 116: Contravening section 51(1) of the CPA: Attempting to Escape from Custody: 4 (four) years imprisonment. In terms of section 280 of the CPA, the term of imprisonment imposed on count 116 to run concurrently with the sentence imposed on count 1.

11) Accordingly the effective term of imprisonment imposed on the first appellant is 40 (forty) years.

[232] **SECOND APPELLANT:**

1) Count 2: Contravening section 2(1)(e) of POCA: Conducting an Enterprise through a Pattern of Racketeering Activity: 20 (twenty) years imprisonment.

2) Count 26, 28 and 29: Contravening section 4(6)(i) of POCA: Money Laundering: 5 (five) years imprisonment on each count.

3) Counts 49, 52, 56, 59, 65, 68, 71, 75 and 77: Theft: 10 (ten) years imprisonment on each count.

4) Count 73: Theft: In terms of section 51(2) of the CLAA: 18 (eighteen) years imprisonment. In terms of section 280 of the CPA it is ordered that 10 (ten) years imprisonment imposed on count 73 to run concurrently with the sentence imposed on count 2.

5) Count 85: Fraud: 10 (ten) years imprisonment.

6) In terms of section 280 of the CPA, the terms of imprisonment imposed on count 26, 28. 29, 49, 52, 56, 59, 65, 68, 71, 73, 75, 77 and 85 to run concurrently with the sentence imposed on count 2.

7) Accordingly the effective term of imprisonment imposed on the second appellant is 28 (twenty-eight) years.

[233] **THIRD APPELLANT:**

1) Count 2: Contravening section 2(1)(e) of POCA: Conducting an Enterprise through a Pattern of Racketeering Activity: 20 (twenty) years imprisonment.

2) Count 39, 59 and 65: Theft: 10 (ten) years imprisonment imposed on each count. In terms of section 280 of the CPA, the terms of imprisonment imposed on these counts to run concurrently with each other and with the sentence imposed on count 2.

3) Count 43 and 45: Theft: In terms of section 51(2) of the CLAA: 18 (eighteen) years imprisonment on each count. In terms of section 280 of the CPA, the terms of imprisonment on counts 43 and 45 to run concurrently with the sentence imposed on count 2.

4) Accordingly the effective term of imprisonment imposed on the third appellant is 20 (twenty) years.

[234] **FOURTH APPELLANT:**

1) Count 2: Contravening section 2(1)(e) of POCA: Conducting an Enterprise through a Pattern of Racketeering Activity: 22 (twenty-two) years imprisonment.

2) Count 43, 45 and 73: Theft: In terms of section 51(2) of the CLAA: 18 (eighteen) years imprisonment on each count. In terms of section 280 of the CPA, the terms of imprisonment imposed on counts 43, 45 and 73 to run concurrently with the sentence imposed on count 2.

3) Count 52: Theft: 10 (ten) years imprisonment. In terms of section 280 of the CPA, the term of imprisonment imposed on count 52 to run concurrently with the sentence imposed on count 2.

4) Accordingly the effective term of imprisonment imposed on the fourth appellant is 22 (twenty-two) years.

[235] **FIFTH APPELLANT:**

1) Count 2: Contravening section 2(1)(e) of POCA: Conducting an Enterprise through a Pattern of Racketeering Activity: 20 (twenty) years imprisonment.

2) Count 27: Contravening section 4(6)(i) of POCA: Money Laundering: 5 (five) years imprisonment. In terms of section 280 of the CPA, the term of imprisonment imposed on count 27 to run concurrently with the sentence imposed on count 2.

3) Counts 45 and 73: Theft: In terms of section 51(2) the CLAA: 18 (eighteen) years imprisonment on each count. In terms of section 280 of the CPA, the

terms of imprisonment imposed on counts 45 and 73 to run concurrently with the sentence imposed on count 2.

4) Count 47, 49, 59, 62, 65, 75 and 81: Theft: 10 (ten) years imprisonment each count. In terms of section 280 of the CPA, the terms of imprisonment imposed on these counts to run concurrently with the sentence imposed on count 2.

5) Count 83: Attempted Theft: 10 (ten) years imprisonment. In terms of section 280 of the CPA, the term of imprisonment imposed on count 83 to run concurrently with the sentence imposed on count 2.

6) Accordingly the effective term of imprisonment imposed on the fifth appellant is 20 (twenty) years.

[236] **SIXTH APPELLANT:**

1) Count 2: Contravening section 2(1)(e) of POCA: Conducting an Enterprise through a Pattern of Racketeering Activity: 20 (twenty) years imprisonment.

2) Count 56 and 59: Theft: 10 (ten) years imprisonment on each count. In terms of section 280 of the CPA, the terms of imprisonment imposed on counts 56 and 59 to run concurrently with the sentence imposed on count 2.
3) Count 73: Theft: In terms of section 51(2) of the CLAA: 18 (eighteen) years imprisonment. In terms of section 280 of the CPA, the term of imprisonment imposed on count 73 to run concurrently with the sentence imposed on count 2.

4) Accordingly the effective term of imprisonment imposed on the sixth appellant is 20 (twenty) years.

[237] **SEVENTH APPELLANT:**

1) Count 2: Contravening section 2(1)(e) of POCA: Conducting an Enterprise through a Pattern of Racketeering Activity: 20 (twenty) years imprisonment.

2) Count 22 and 25: Contravening section 4(6)(i) of POCA: Money Laundering: 5 (five) years imprisonment. In terms of section 280 of the CPA, the terms of imprisonment imposed on counts 22 and 25 to run concurrently with the sentence imposed on count 2.

3) Count 43 and 73: Theft: In terms of section 51(2) of the CLAA, 18 (eighteen) years imprisonment on each count. In terms of section 280 of the CPA, the terms of imprisonment imposed on counts 43 and 73 to run concurrently with the sentence imposed on count 2.

4) Counts 52, 56, 59, 62, 65, 75, and 82: Theft:10 (ten) years imprisonment on each count. In terms of section 280 of the CPA, the terms of imprisonment imposed on these counts to run concurrently with the sentence imposed on count 2.

5) Accordingly the effective term of imprisonment imposed on the seventh appellant is 20 (twenty) years.

[238] **EIGHTH APPELLANT:**

1) Count 2: Contravening section 2(1)(e) of POCA: Conducting an Enterprise through a Pattern of Racketeering Activity: 25 (twenty-two) years imprisonment.

2) Count 4, 7, 9, 35, 59 and 75: Theft: 10 (ten) years imprisonment each count. In terms of section 280 of the CPA, the terms of imprisonment imposed on these counts to run concurrently with each other and with the sentence imposed on count 2.

3) Count 16, 30 and 32: Theft: In terms of section 51(2) of the CLAA: 18 (eighteen) years imprisonment on each count. In terms of section 280 of the

CPA, the terms of imprisonment imposed on these counts to run concurrently with the sentence imposed on count 2.

4) Count 19 and 20: Contravening section 4(6)(i) of POCA: Money Laundering: 5 (five) years imprisonment on each count. In terms of section 280 of the CPA, the terms of imprisonment imposed on counts 19 and 20 to run concurrently with each other and with the sentence imposed on count 2.

5) Count 85: Fraud: 10 (ten) years imprisonment. In terms of section 280 of the CPA, the term of imprisonment imposed on count 85 to run concurrently with the sentence imposed on count 2.

6) Accordingly the effective term of imprisonment imposed on the eighth appellant is 22 (twenty-two) years.

[239] **NINTH APPELLANT:**

1) Count 2: Contravening section 2(1)(e) of POCA: Conducting an Enterprise through a Pattern of Racketeering Activity: 22 (twenty-two) years imprisonment.

2) Count 21, 25, 26 and 27: Contravening section 4(6)(i) of POCA: Money Laundering: 3 (three) years imprisonment on each count. In terms of section 280 of the CPA, the terms of imprisonment imposed on counts 21, 25, 26 and 27 to run concurrently with the sentence imposed on count 2.

3) Count 37, 47, 49, 52, 56, 59, 62, 65 and 75: Theft: 10 (ten) years imprisonment on each count. In terms of section 280 of the CPA, the terms of imprisonment imposed on these counts to run concurrently with each other and with the sentence imposed on count 2.

4) Count 43, 45 and 73:Theft: In terms of section 51(2) of the CLAA: 18 (eighteen) years imprisonment on each count. In terms of section 280 of the

CPA, the terms of imprisonment imposed on counts 43, 45 and 73 to run concurrently with the sentence imposed on count 2.

5) Count 83: Attempted Theft: 10 (ten) years imprisonment. In terms of section 280 of the CPA, the term of imprisonment imposed on count 83 to run concurrently with the sentence imposed on count 2.

6) Count 86 - 114: Forgery: 3 (three) years imprisonment on each count. In terms of section 280 of the CPA, the terms of imprisonment imposed on counts 86-114 to run concurrently with the sentence imposed on count 2.

7) Accordingly the effective term of imprisonment imposed on the second appellant is 22 (twenty-two) years.

These sentences are antedated to 24 June 2015.

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CSP OOSTHUIZEN-SENEKAL
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

I agree

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CI MOOSA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

I agree

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M JORDAAN
ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

DATE OF HEARING: **24 October 2022**

DATE JUDGMENT DELIVERED: **06 February 2023**

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