



**THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA**

**MEDIA SUMMARY – JUDGMENT DELIVERED
IN THE SUPREME COURT OF APPEAL**

From: The Registrar, Supreme Court of Appeal
Date: 21 August 2018
Status: Immediate

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

A C SCHOLTZ & OTHERS

v

THE STATE

The first appellant, Mr A C Scholtz, and the eighth appellant, Mr J F Block, together with various companies in which they had an interest, were tried and convicted in the Northern Cape Division of the High Court on various charges of corruption and money laundering. They appealed against their convictions while Mr Scholtz and Mr Block also appealed against the sentence imposed upon them.

The charges on which the appellants were convicted arose from a number of lease agreements concluded during a period May 2006 to August 2008 by

various State entities and departments in the Northern Cape with members of what became known as the Trifecta Group of Companies, the second to seventh appellants.

The first appellant, Mr Scholtz, a businessman from Pretoria who was engaged in the private equity business, came into contact with a Mr Sarel Breda with whom he identified business prospects in the Northern Cape. Their business model was to identify rundown buildings which could be renovated into offices and then leased to State entities. This was done and in due course a number of leases were concluded which went to the heart of the charges that were brought.

The trial court held that the eighth appellant, Mr John Block who was a senior politician in the province, had corruptly used his influence to ensure that Mr Breda and his companies obtained certain of these leases. These were concluded with the State without the necessary statutory protocols and procedures being followed. As a *quid pro quo* for his actions, he was paid substantial gratifications, including two payments of R228 000 and R500 000. Mr Block appealed against this finding.

The Supreme Court of Appeal exhaustively analysed the evidence relating to these particular counts and held that the two amounts of R228 000 and R500 000 were corrupt gratifications which fell within the ambit of the charge of corruption set out in the indictment – which related solely to the conclusion of contracts of lease for two buildings, the Kimberlite Hotel and the NCTC Building. It held that various other substantial gratifications which had been paid to Mr Block had probably also been paid to him as part of a corrupt relationship but that those payments had not related to the two buildings

mentioned and that the State had limited itself to those buildings in its charge. It therefore found that had the charge been framed differently he may well have been found guilty of corruption relating to all the payments made to him but that, although his appeal against his conviction should stand, it related only to the payments of R228 000 and R500 000.

It was argued on behalf of Mr Block that he could not be convicted of corruption as he had received these sums after the contracts had been concluded. This was rejected by the Supreme Court of Appeal.

In regard to sentence, the Supreme Court of Appeal went on to hold that there were no substantial and compelling circumstances which justified a lesser sentence than the 15 years' imprisonment which was prescribed by the legislature for this offence. In doing so, the court mentioned that Mr Block had been a political leader who had achieved high political office which he abused to corruptly enrich himself; that the political leaders of this country should set the example and not misuse public office to corruptly obtain personal wealth; and that in these circumstances it was necessary for a unequivocal message to be sent out that corruption on the part of politicians holding high office would not be tolerated. The court therefore confirmed the sentence of 15 years' imprisonment imposed on Mr Block.

Turning to Mr Scholtz, in regard to the Kimberlite Hotel and the NCTC Building leases the State conceded on appeal that the evidence fell short of establishing beyond a reasonable doubt that he had known of the payments of R228 000 and R500 000 which had been effected by his business associate Mr

Breda. Mr Scholtz's conviction of corruption relating to those offences and the sentence imposed in respect thereof were accordingly set aside.

However on a further count relating to six further leases, the appeal of Mr Scholtz was dismissed. The leases in question had been negotiated on behalf of the State by a Ms Botha who made various decisions beneficial to the Trifecta Group, in some instances on terms even more beneficial than those in respect of which the State had been invited to contract. This Ms Botha had done in order to convey a benefit to an entity known as the Jyba Investment Trust in which she had an interest valued at millions of rand. In an affidavit in previous proceedings – the correctness of which Mr Scholtz disputed and blamed the incorrect allegations upon his legal representatives – Mr Scholtz had stated that he had from 1995 been aware that a trust of Mr Breda had undertaken to hold 10% shares in the Trifecta Holding Company as nominee of Ms Botha. This indicated that throughout the time of the negotiations between the Trifecta Group and the State Ms Botha was advancing her own interest. Had this interest been known, and disclosed as it ought to have been, the leases would not have been concluded. Ms Botha therefore clearly acted corruptly, and her corruption was the mirror image of the corruption charge laid against Mr Scholtz whom the Supreme Court of Appeal held had been aware of the facts set out in his earlier affidavit.

Mr Scholtz tried to avoid the obvious consequence of this by falling back on a default contention that he left the daily running of the business to Mr Breda and that he had not been aware of any improper negotiations relating to the leases. The Supreme Court of Appeal analysed the evidence and concluded that even if Mr Scholtz had not been actively involved in negotiating the leases, it would be extending the ground bounds of credulity to accept that he was obviously unaware of all the negotiations leading up to their conclusion. In the

circumstances the only reasonable inference to be drawn was that to the knowledge of Mr Scholtz the 10% shareholding in the Trifecta Holding Company constituted a gratification that had been promised to Ms Botha in 2005 in order for her to assist in securing leases for the Trifecta Group of Companies. Mr Scholtz had therefore been properly convicted of corruption.

In Mr Scholtz's case, too, although the evidence established that there were various other gratifications that Ms Botha received, these fell beyond the ambit of the charge which had been set out in the indictment and did not relate to the conduct of a general on-going relationship between Ms Botha and her co-accused. However in Mr Scholtz's case, too, there were no special and compelling circumstances which justified the imposition of a sentence less than the prescribed minimum of 15 years' imprisonment in respect of the corruption that fell within the indictment.

The appellants had been convicted of money laundering on various counts of money laundering but the State correctly conceded that they could not be convicted on those counts. The appeal affecting those convictions therefore succeeded.

In the result, although certain of the convictions and sentences were set aside, the conviction of Mr Block and Mr Scholtz on different charges of corruption were confirmed, as was the sentence of 15 years' imprisonment imposed upon them.