

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**

**Minister of Justice v Ntuli**

**Case CCT 15/97**

**Decided on 5 June 1997**

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**Media Summary**

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*The following media summary is provided to assist in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

The case involved a challenge to the constitutionality of s 84 of the Forest Act 122 of 1984 (the Act), which presumes negligence in certain circumstances. The Act regulates the prevention and control of fires by creating fire control areas where schemes of compulsory fire control are established. Landowners outside of fire control areas are encouraged but not required to embark on fire control measures.

In the court a quo (Transvaal Provincial Division), damages were claimed against the applicant for a fire that had started on his land (outside a fire control area) and spread to the first respondent's land. As s 84 of the Act presumed negligence, the applicant was required to disprove such negligence. He challenged the constitutionality of s 84 on the grounds that it violated the right to be presumed innocent (s 25(3)(c)) and the right to equality (s 8) of the interim Constitution.

As for the challenge in terms of s 25(3)(c) the applicant argued that if the presumption of negligence in s 84 infringed his right to be presumed innocent in a criminal matter, the presumption would infringe the same right in a civil matter. The Court rejected this argument on two grounds. First, the possible effect of s 84 in a criminal case did not arise in this case. Second, even if the section were assumed to apply to criminal trials, the Court would have had to give it a restricted meaning as required by s 35(2) of the interim Constitution. Section 35(2) requires the Court, where possible, to interpret a provision in such a manner as to preserve its constitutionality.

The applicant argued that the differentiation (i) between defendants in veld fire cases and those in other delictual matters and (ii) between fires in non-controlled areas and those in controlled areas infringed his right to equality under s 8(1) and was unfairly discriminatory under s 8(2). The Court held that s 84 breached neither the right to equality nor the prohibition against unfair discrimination. The differentiation between fires in controlled areas and those in non-controlled areas is not contrary to s 8(1). A rational relationship exists between the means chosen (the differentiation imposed by the presumption of negligence in s 84) and the purpose sought to be achieved by the Act, which is the prevention of veld fires.

The Court also held that when the state differentiates on a ground not specified in s 8(2), the differentiation constitutes unfair discrimination if persons are treated differently in a way which impairs their dignity as human beings. However, the Court noted that there may be other invidious forms of differentiation which have a comparably serious adverse effect on persons that could also violate s 8(2). The Court concluded that the differentiation cannot be seen as impairing the dignity of the owner of the land outside the fire control area. Accordingly, there was no breach of s 8(2).

The Court concluded that s 84 of the Act was not unconstitutional and referred the matter back to the court a quo to be considered in light of the judgment.

The judgment of the Court was delivered by Ackermann J, O'Regan J and Sachs J, and was concurred in by Chaskalson P, Mahomed DP, Goldstone J, Kriegler J, Langa J, Madala J and Mokgoro J. Didcott J delivered a separate judgment concurring in the order of the Court.