

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

S v Ntsele

Case CCT 25/97

Decided on 14 October 1997

Media Summary

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 Natal High Court declared s 21(1)(b) of the Drugs and Drug Trafficking Act 140 of 1992¹ invalid. The provision presumes that anyone in charge of cultivated land which has dagga plants growing on it is dealing in dagga. The High Court followed the reasoning of previous judgements of the Constitutional Court in finding that the provision violated the constitutional right to be presumed innocent. The judgment of the High Court was referred to the Constitutional Court for confirmation in terms of s 167(5) of the Constitution.

The Constitutional Court described s 21(1)(b) as a "statutory instruction to infer guilt from circumstances that do not necessarily support such inference". The objection to such an instruction is that it entails a risk of a conviction despite the existence of a reasonable doubt as to the guilt of the accused. The Court agreed with the judgment of the High Court that this was the very antithesis of the presumption of innocence protected in the Constitution.

The Court dealt additionally, with two procedural matters. The first was whether the new Constitution was in fact applicable. The new Constitution requires "pending cases", that is, cases pending at the time of the coming into effect of the new Constitution, to be dealt with under the interim Constitution "unless the interests of justice require otherwise". It was held that even if the case had been pending, this was a case where the interests of justice required that the new Constitution be applied. The principal reason was that the difference between the two Constitutions was procedural rather than substantive (ie the difference would not affect the outcome of the case), and that having to follow the procedure under the interim Constitution for technical reasons alone was a roundabout way of achieving the same result. Also, in the present case, the application of the interim Constitution would have required the rearrest of the accused. The second procedural matter dealt with by the Court concerned whether the order of invalidity should be retrospective and apply to cases already tried. The Constitutional Court suggested that High Courts should consider the suspension or retrospective effect of orders of invalidity in their judgments, particularly because doing so might involve the hearing of evidence from the parties, and this evidence is appropriately received and evaluated by the court of first instance.

The judgment of the Court was delivered by Kriegler J and was concurred in by the other members of the Court.