
Explanatory Note

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

This case concerns the constitutional validity of two reverse onus provisions found in the Drugs and Drug Trafficking Act. The first provision, section 21(1)(c), provided that if it is proved that an accused conveyed any drug, it shall be presumed, until the contrary is proved, that the accused dealt in such drug. The second provision, section 20, provided that if it is proved that any drug was found in the immediate vicinity of the accused, it shall be presumed, until the contrary is proved, that the accused was found in possession of such drug.

Mr Manyonyo was convicted of dealing in dagga and sentenced, on 20 July 1995, to forty-two months' imprisonment of which eighteen months was conditionally suspended for five years. During automatic review of Mr Manyonyo's case, the Supreme Court referred the reverse onus provisions to the Constitutional Court, to determine their constitutional validity.

This was considered necessary as the Supreme Court judges were of the opinion that, in convicting Mr Manyonyo, the magistrate had relied on these provisions.

For reasons that are not yet clear, the referral from the Eastern Cape Division came to the attention of the Director of the Constitutional Court only during October 1999. The Court pointed out that it has taken steps to establish the reason for the delay. The Court also emphasised the responsibility of registrars of referring courts to ensure that referrals are properly lodged with the Constitutional Court. Fortunately, at the instance of the reviewing judges, steps were taken at the time the referral order was made to secure Mr Manyonyo's release from custody in February 1996, pending determination of the constitutional issues. The damage that could have resulted from the delay has therefore been avoided.

The Constitutional Court held that both provisions are unconstitutional and invalid. The first provision, section 21(1)(c) of the Act, had already been declared invalid in a judgment, *S v Mjezu*, delivered on 6 May 1996 by the Northern Cape Division of the High Court. The Constitutional Court agreed with this decision. The second provision, section 20 of the Act, had also already been declared unconstitutional and invalid in *S v Mello*, a Constitutional Court judgment delivered on 28 May 1998. The Court pointed out that the order in *S v Mello* applies to Mr Manyonyo's case.

