



CONSTITUTIONAL COURT OF SOUTH AFRICA

Musa Joe Moloi & Others v Minister for Justice and Constitutional Development & Others

**Case CCT 78/09
[2010] ZACC 2**

Date of Judgment: 4 February 2010

MEDIA SUMMARY

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

Today the Constitutional Court delivered judgment in an application for direct access, which was brought on the basis of urgency, concerning the validity of the convictions and sentences imposed on the applicants by certain Magistrates' Courts in Kempton Park, Gauteng.

The applicants are currently incarcerated at Modderbee Correctional Centre, Benoni and are unrepresented. They were all charged with and convicted of dealing in drugs in contravention of the Drugs and Drugs Trafficking Act, 1992 (the Act). Section 21 of the Act provides that if a certain fact was proved by the prosecution, then it would be presumed, until the contrary was proved, that the accused had been dealing in the drug in question. The applicants also faced alternative charges of being in possession of drugs. They applied for condonation for the late filing of their application, as well as for failing to comply with certain rules and procedures of this Court.

In a series of cases, this Court has declared the presumptions contained in section 21 of the Act unconstitutional and therefore invalid. However, the applicants contend that they were charged with and convicted of dealing in drugs in terms of the provisions of the Act which have been declared unconstitutional and invalid by this Court. The applicants argue further that their right to a fair trial enshrined in section 35 of the Constitution has been violated and that their convictions and sentences fall to be set aside because they were charged with contravening provisions that are invalid.

The Court directed the magistrates who presided over the applicants' respective criminal trials to furnish it with reports on whether they relied on the presumptions in section 21 of the Act in convicting the applicants and if not, why their charge sheets had not been amended to exclude the presumptions. Each of the magistrates stated that they did not rely on the presumptions

contained in section 21 of the Act in convicting the applicants. They also stated that, regardless of whether the charge sheet was amended, the Criminal Procedure Act provides that the failure to amend a charge sheet does not affect the validity of the criminal proceedings.

The second respondent, the Director of Public Prosecutions, South Gauteng High Court, Johannesburg opposed the application. He argued, amongst other things, that the applicants did not raise a constitutional issue and that it would not be in the interests of justice for this Court to be a court of first and last instance in respect of the issues raised by the applicants.

The Court found that, in the light of the constitutional right to a fair trial and the right to be presumed innocent until proven guilty, the question whether an accused person is prejudiced by a defective charge sheet raises an important constitutional issue.

The Court found that the applicants have reasonable prospects of success in having their convictions set aside, but that it would not be in the interests of justice to grant their application for direct access because of the Court's reluctance to be a court of first and last instance in a matter that does not fall within its exclusive jurisdiction.

Accordingly, the Court granted the applicants' application for condonation, but it dismissed the application for direct access at this stage. The Court also directed the registrar to send a copy of the judgment to the head office of Legal Aid, Johannesburg, the Law Society of the Northern Provinces and to the Society of Advocates, Johannesburg, with a request to consider whether any of their members would be amenable to represent the applicants, should they wish to appeal against their convictions.