

---

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.*

In this case the Constitutional Court considered a challenge to a provision of the General Laws Amendment Act which creates an offence where a person who is found in possession of goods which are reasonably suspected to have been stolen, is unable to give a satisfactory account of such possession. The appellants, the Osmans, argued that the provision conflicts with : (1) the right of an arrested or detained person not to be compelled to make a confession or admission which could be used in evidence against him or her, and (2) the rights of an accused person to be presumed innocent, to remain silent and not to give evidence at trial. The Court held that the provision is not in conflict with these rights under the interim Constitution.

The appellants had been found in possession of a number of tyres, and were unable to satisfactorily explain such possession. Their trial in the Magistrate's Court was stayed to allow them to pursue the constitutional challenge in the High Court. In August 1997, the Transvaal High Court found that the provision did not violate the appellants' rights, and the Osmans appealed to the Constitutional Court.

Justice Madala delivered the unanimous judgment of the Court. He found that the provision does not compel an arrested or detained person to do anything, nor does it apply pressure on such person to make a statement. He emphasised that such a person has a choice whether or not to provide an explanation for the possession of the goods. An arrested or detained person suffers no prejudice at trial in the absence of an earlier explanation, because he or she retains the right to furnish an explanation at trial if he or she so chooses.

The Court then considered whether the provision infringes the right to remain silent and the presumption of innocence in a criminal trial. It found that even where an accused elects to remain silent, the duty of the State to prove its case beyond reasonable doubt remains unchanged.

An accused, however, runs the risk that in the absence of an explanation by him or her, the State case may be sufficient to prove the elements of the offence. An accused in this situation may find it wise to furnish a defence, by his or her own testimony or by calling witnesses, but that is a practical impetus of our system of litigation. The choice to give evidence or not is left entirely to the accused. Justice Madala stressed that the choice is not one that can be forced upon the accused, or one which was unavailable to the Osmans.

Applying these principles, the Court found that the requirements of the provision do not apply pressure which infringes the rights of persons under the interim Constitution. Consequently the appeal was dismissed.

23 September 1998