



CONSTITUTIONAL COURT OF SOUTH AFRICA

Minister of Police and Others v Grace Nomazizi Kunjana

CCT 253/15

Date of hearing: 12 May 2016

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.

On Thursday 12 May 2016 at 10h00, the Constitutional Court will hear an application for the confirmation of an order of the High Court of South Africa, Western Cape Division, Cape Town (High Court) declaring section 11(1)(a) and (g) of the Drugs and Drug Trafficking Act 140 of 1992 (Act) invalid.

On 14 March 2011, acting in terms of section 11 of the Act, members of the South African Police Service (SAPS) conducted search and seizure operations at properties leased by the respondent, Ms Grace Kunjana. As a result, large quantities of Mandrax, Tik, cash and records of drug-dealing transactions were uncovered. Consequently, Ms Kunjana was charged for the illegal possession of, and dealing in, drugs.

Ms Kunjana applied to the High Court for a declaration that section 11 of the Act was invalid. The High Court found that only section 11(1)(a) and (g) unduly infringed Ms Kunjana's right to privacy and accordingly declared these subsections invalid, leaving the remainder of the provision untouched.

In this Court, the Minister of Police, the Director of Public Prosecutions: Western Cape and the Minister of Justice and Correctional Services (the applicants) seek confirmation of the High Court's order. The applicants submit that section 11(1)(a) and (g) of the Act, which authorise warrantless searches even where there is no urgency, constitute an unjustifiable limitation to the right to privacy. The applicants also submit that the High Court was correct in giving only prospective effect to its declaration and argue that this Court should do the same.

Ms Kunjana supports the applicants' confirmation application. She advances arguments similar to those of the applicants. Ms Kunjana also accepts that the High Court exercised its discretion justly and equitably by ordering the immediate effect of the declaration of invalidity and sees no reason why this Court should depart from such order.