



CONSTITUTIONAL COURT OF SOUTH AFRICA

Minister of Police and Others v Grace Nomazizi Kunjana

CCT 235/15

Date of hearing: 12 May 2016

Date of judgment: 27 July 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.

Today the Constitutional Court handed down judgment in a matter concerning the constitutionality of section 11(1)(a) and (g) of the Drugs and Drug Trafficking Act (Act).

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, SAPS uncovered large quantities of Mandrax, Tik, cash, and records of drug-dealing transactions. 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. While the High Court declined to declare section 11 invalid in its entirety, it found that section 11(1)(a) and (g) unduly infringed Ms Kunjana's right to privacy and accordingly declared these subsections invalid.

In this Court, the Minister of Police, the Director of Public Prosecutions: Western Cape and the Minister of Justice and Constitutional Services (applicants) requested an order confirming the High Court's order. The applicants submitted that section 11(a) and (g) of the Act, which authorises warrantless searches even where there is no urgency, constitute an unjustifiable limitation on the right to privacy. The applicants supported the decision and order of the High Court that the effect of the order of invalidity would be prospective. Ms Kunjana supported the applicants' confirmation application.

In a unanimous judgment written by Mhlantla J, (Moseneke DCJ, Bosielo AJ, Cameron J, Froneman J, Jafta J, Khampepe J, Madlanga J, Nkabinde J and Zondo J concurring) the Court held that there exists no justification for the infringement of the rights to privacy and dignity by the provision and therefore confirmed the order of constitutional invalidity. Mhlantla J held that there are less restrictive means for police officials to achieve the purpose of the section. The order of invalidity was made prospective in order to avoid any inconvenience which would be caused by undoing decisions and actions already taken by courts in terms of the section.

On the issues of costs, Mhlantla J held that the purpose of a costs order is to indemnify a successful party in litigation and to refund expenses actually incurred by the party. Further, an application for the confirmation of an order of constitutional invalidity does not include an order confirming the costs order granted by the lower court. The Court therefore declined to grant Ms Kunjana costs beyond the date when she filed her notice in support of the application.