



THE REPUBLIC OF SOUTH AFRICA

"A"

IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NO 9073/2015

In the matter between:

**GRACE NOMZAIZI KUNJANA**

Applicant

and

**THE MINISTER OF POLICE**

First Respondent

**THE DIRECTOR OF PUBLIC PROSECUTIONS:  
WESTERN CAPE**

Second Respondent

**THE REGIONAL MAGISTRATE, KHAYELITSHA**

Third Respondent

**THE MINISTER OF JUSTICE AND  
CONSTITUTIONAL DEVELOPMENT**

Fourth Respondent

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JUDGMENT 3 DECEMBER 2015

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VELDHUIZEN J:

[1] In this application the applicant applies for an order

- '1 Declaring section 11 of the Drugs and Drug trafficking Act 140 of 1992 inconsistent with the Constitution of the Republic of South Africa, 1996 ("the Constitution") and invalid

2. Declaring the conduct of the First Respondent's officials ("the police officers") in conducting the search and seizure operation at 2 Moore Street, Kenilworth, Cape Town on 14 March 2011 ("the first search") inconsistent with the Constitution, unlawful and invalid.
3. Declaring the conduct of the First Respondent's officials ("the police officers") in conducting the search and seizure operation at Chartwell Place, Robinson Street, Wynberg, Cape Town on 14 March 2011 ("the second search") inconsistent with the Constitution, unlawful and invalid.
4. . . .
5. Ordering the First Respondent to pay the costs of this application, including the costs of two counsel.\*

#### **BACKGROUND**

[2] On 14 March 2011 police officials conducted a search of two premises. The first one was at 2 Moor Street, Kenilworth. A large quantity of drugs were found and seized. Later they also searched the premises at Chartwell Place, Robinson Street, Wynberg. They again found and attached a large quantity of drugs. Both searches were conducted without first having obtained search warrants.

### DISCUSSION

[3] The relief sought by the applicant is directed at the whole of s 11 of the Drugs and Drug trafficking Act 140 of 1992 ('the Act'). This is clearly overbroad. The section contains provisions that have nothing to do with the facts of the matter under consideration. In my view the relief should be restricted to s 11(1)(a) and (g) of the Act. The relevant parts of s 11 read:

#### **s 11 Powers of police officials**

- (1) A police official may –
  - (a) if he has reasonable grounds to suspect that an offence under this Act has been or is about to be committed by means or in respect of any scheduled substance, drug or property, at any time –
    - (i) enter or board and search any premises, vehicle, vessel or aircraft on or in which any such substance, drug or property is suspected to be found;
    - (ii) search any container or other thing in which any such substance, drug or property is suspected to be found;
  - (b) ... (f);
  - (g) seize anything which in his opinion is connected with, or may provide proof of, a contravention of a provision of this Act.

carried out were done by officials in the bona fide belief that they were empowered to do so by the provisions of the Act.

[9] Whether the evidence gathered in consequence of searches so carried out is admissible is not for me to decide. That is a matter in the discretion of the trial court where the matters are pending.

[10] If the order made has immediate effect it would not unduly impinge on the investigating powers and procedures of police officials. They have other remedies at their disposal and in many of the matters would be able to obtain search warrants on an urgent basis.

### COSTS

[11] It was argued that the applicant should not be entitled to a costs order because she has not come to court for purely altruistic reasons but is seeking the order purely in her own interests. However that may be, the fact of the matter is she was obliged to bring the application to obtain an order of invalidity and in my view should not be deprived of her costs.

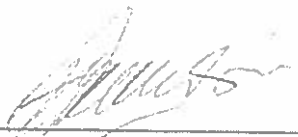
### ORDER

[12] I accordingly make the following order:

- (a) Section 11(1)(a) and (g) of the Drugs and Drug trafficking Act 140 of 1992 are declared invalid;

- (b) The declaration of invalidity is not retrospective, and
- (c) The first and fourth respondents are ordered to pay the costs of the application.

[13] This order is referred to the Constitutional Court for its decision regarding the declaration of invalidity.

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A.H. VELDHUIZEN, J  
JUDGE OF THE HIGH COURT



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Fourth Respondent

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ADDEMDUM: 10 DECEMBER 2015

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VELDHUIZEN J:

It has been brought to my attention that the application in fact involves two applications. The one under case number 9073/15 and as well as case number 13470/13. The first one which merely related to costs involved in the application for postponement. Due to an oversight, I did

not specifically make it clear that the costs order I had made is in respect of both applications. In the result I do so now and order that the costs order that I made include the costs of both applications ie in case 9073/15 as well as case 13470/13.



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A.H. VELDHUIZEN, J  
JUDGE OF THE HIGH COURT

"B"

CASE NO. 9073/2015

IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)

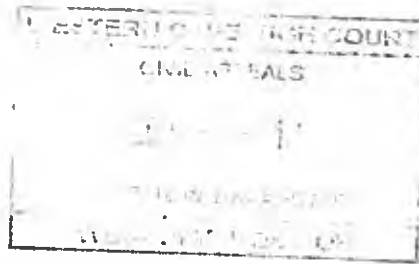
CAPE TOWN: Thursday 3 December 2015

Before the Honourable Mr Justice Veldhuizen

In the ex parte application of:

GRACE NOMZAIZI KUNJANA

Applicant



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THE MINISTER OF POLICE

First Respondent

THE DIRECTOR OF PUBLIC PROSECUTIONS,  
WESTERN CAPE

Second Respondent

THE REGIONAL MAGISTRATE, KHAYELITSHA

Third Respondent

THE MINISTER OF JUSTICE AND  
CONSTITUTIONAL DEVELOPMENT

Fourth Respondent

**Having the Legal Representative for the Applicant and Respondent  
and having read the documents filed of record;**

**IT IS ORDERED:**

1. That Section 11(1)(a) and (g) of the Drugs and Drug trafficking Act 140 of 1992 are declared invalid.
2. That the declaration of invalidity is not retrospective; and
3. That the first and fourth respondents are to pay the costs of the application.
4. That this order is referred to the Constitutional Court for its decision regarding the declaration of validity.

Francois Potgieter & Partners  
c/o Keith Hamblin & Co.  
CAPE TOWN

**BY ORDER OF THE COURT**

**COURT REGISTRAR**

/avz