

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT: 3/98

ROBERT VAN NELL

First Appellant

SAM BEKKER

Second Appellant

versus

THE STATE

Respondent

Decided on : 28 May 1998

JUDGMENT

MOKGORO J:

[1] This case comes before this Court for confirmation under the 1996 Constitution¹ of an order of constitutional invalidity made by the Northern Cape High Court in respect of section 20 of the Drugs and Drugs Trafficking Act² (the Act).³ This section, embodying a so-called “reverse onus”, provides as follows:

“20. Presumption relating to possession of drugs.—If in the prosecution of any person for an offence under this Act it is proved that any drug was found in the immediate vicinity of the accused, it shall be presumed, until the contrary is proved, that the accused

¹ In terms of section 172 of the Constitution of the Republic of South Africa, 1996.

² Act 140 of 1992 .

³ The section was held to be inconsistent with section 35(3)(h) of the 1996 Constitution by the Court *a quo*.

was found in possession of such drug.”

In its terms, this section requires that facts, essential to the prosecution of a case against an accused, be presumed to exist, notwithstanding the presence of a reasonable doubt as to their existence in the mind of the trier of fact.

[2] At approximately the same time as the referral for confirmation under the 1996 Constitution was made, a referral in terms of section 102(1) of the interim Constitution⁴ in relation to the self-same section was brought to this Court under the head *Mello and Another v The State*.⁵ We have this morning in that case declared section 20 of the Act to be in conflict with the provisions of the Constitution of the Republic of South Africa Act 200 of 1993 and declared it to be invalid. In addition in *Mello*, we declared the application of section 20 in any criminal trial to be invalid where a verdict had been entered after 27 April 1994, and in which, as at the date of the judgment in *Mello*, either an appeal or review of the matter was pending or had not been finalised, or the time for noting an appeal had not yet expired. Accordingly, that order covers the situation

⁴ Constitution of the Republic of South Africa Act 200 of 1993.

⁵ Case CCT 5/98. As yet unreported judgment.

presented in this case.

[3] The matter is referred back to the Northern Cape High Court to be disposed of in accordance with the order in the case of *Mello*.⁶

Chaskalson P, Langa DP, Ackermann J, Goldstone J, Kriegler J, Madala J, O'Regan J, Sachs J and Yacoob J concur in the judgment of Mokgoro J.

⁶ Id.