

Minister of Health v Treatment Action Campaign (TAC)	
Project code ¹	SAF
URL	http://www.saflii.org/za/cases/ZACC/2002/15.pdf
Citations	(2002) 5 SA 721 (CC)
Country	South Africa
Date of judgment	5 July 2002
Court	Constitutional Court of South Africa
Location	Braamfontein
Case type ²	Direct Leave to Appeal
Result	Allowed
Flynote ³	Human rights and fundamental freedoms - Bill of Rights- access to healthcare - the availability and affordability of medical services, medication, and treatment for HIV positive mothers and their unborn children.
Legislation and International Instruments ⁴	<p>Legislation</p> <ul style="list-style-type: none"> • Constitution of South Africa (the right to equality (section 9), the right to dignity (section 10), the right to life (section 11), the right to access healthcare services (section 27), and the best interests of the child (section 28)) • Medicines and Related Substances Control Act 101 of 1965 as amended • Promotion of Equality and Prevention of Unfair Discrimination Act No. 4 of 2000 <p>International instruments</p> <ul style="list-style-type: none"> • Universal Declaration of Human Rights-Article 25 • International Covenant on Economic, Social and Cultural Rights -Article 2(1) • The Convention on the Rights of the Child, • The African Charter on Human and Peoples' Rights- Article 16(2)
Cases cited as authority ⁵	<ul style="list-style-type: none"> • <i>Ex Parte Chairperson of the Constitutional Assembly: In re Certification of the Constitution of the Republic of South Africa</i>, 1996 1996 (4) SA 744 (CC); 1996 (10) BCLR 1253 (CC) • <i>Hoffmann v South African Airways</i> 2001 (1) SA 1 (CC); 2000 (11) BCLR 1211 (CC). • <i>Government of the Republic of South Africa and Others v Grootboom and Others (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR</i>

¹ Project code is the combination of the three jurisdiction letters (KEN for Kenya, SAF for South Africa etc) and the unique case identification number for the index. E.g., a project code could be KEN1, SAF34, ZAM12).

² Whether Trial, Application or Appeal.

³ **Area of law** - topic – subtopic.

⁴ Legislation/ International instrument title and section numbers.

⁵ List of cases considered to be important precedent (case name and citation).

	<p>1169 (4 October 2000)</p> <ul style="list-style-type: none"> • <i>Soobramoney v Minister of Health (Kwazulu-Natal)</i> (CCT32/97) [1997] ZACC 17; 1998 (1) SA 765 (CC); 1997 (12) BCLR 1696 (27 November 1997) • <i>President of the Republic of South Africa v Hugo</i> (1997) 4 SA 1 (CC) • <i>President of the Republic of South Africa v Hugo</i> (1997) 4 SA 1 (CC) • <i>Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others</i> 1996 (1) SA 984 (CC); 1996 (1) BCLR 1 (CC) • <i>Fose v Minister of Safety and Security</i> 1997 (3) SA 786 (CC); 1997 (7) BCLR 851 (CC) • <i>Mohamed v President of the RSA and Others (Society for the Abolition of the Death Penalty in South Africa and Another Intervening)</i> 2001 (3) SA 893 (CC); 2001 (7) BCLR 685 (CC).
Facts ⁶	<p>The case began on August 21, 2001, as an application in the High Court. The applicants included various associations and members of civil society concerned about HIV/AIDS treatment and prevention. The appeal aimed to reverse orders made against the government regarding its response to HIV/AIDS, specifically addressing the risk of transmission from HIV-positive mothers to their babies at birth. The court held that the government had not adequately addressed this need by unreasonably denying access to the antiretroviral drug nevirapine in the public health sector when medically necessary, and by failing to establish a timeframe for a national program to prevent mother-to-child transmission of HIV.</p>
Summary ⁷	<p>The court found the government's policy regarding pregnant women with HIV to be unreasonable, resulting in the violation of constitutional rights. The court emphasized that financial constraints cannot override the government's obligation to protect constitutional rights and that alternative solutions must be found. The court ruled in favour of the applicants, stating that the policy infringed upon the rights of pregnant women and their unborn children. The case had significant implications for HIV/AIDS policy and prompted a change in the government's approach to HIV treatment.</p>
Decision/ Judgment ⁸	<p>The Constitutional Court ruled in favour of the</p>

⁶ Brief facts about the case (max 150 words).

⁷ Summary of the determination of legal questions and/or grounds of appeal (between 150-250 words).

⁸ A brief summary of the ruling/judgment of the court (max 100 words).

	<p>applicants, deeming the government's policy denying antiretroviral drugs to pregnant women with HIV as unconstitutional. The court ordered the immediate provision of these drugs to all pregnant women in need. This landmark judgment highlighted the importance of safeguarding healthcare and the right to life, particularly in the context of HIV/AIDS in South Africa.</p>
Basis of the decision ⁹	<p>The court considered evidence presented by the applicants that showed the significant benefits of antiretroviral drugs in preventing the transmission of HIV from mothers to their unborn children. The court also noted that the government's policy disproportionately affected women and children, leading to unnecessary deaths and suffering.</p>
Reported by Date	<p>Abongile Nkamisa 16 June 2023</p>

⁹ A 1-2 sentence summary of the basis of the decision (i.e., which legal rules were relied on).