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Explanatory Note

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*The following explanation is provided to assist the media in reporting this case and is not binding in the Constitutional Court or any member of the Court.*

This is an appeal from the Supreme Court of Appeal (the SCA) on a constitutional issue. Two questions arose: First whether there was sufficient evidence on record to decide the constitutional issue and, if not, whether the court should call for further evidence. The second question was whether the proceedings in the SCA were a nullity because it had not sat as a bench of eleven, as a section of the Supreme Court Act seemed possibly to require.

The appellant is a practising Rastafari who allegedly uses cannabis (dagga) for religious reasons. His initial challenge was directed at the Law Society's finding that he was not a fit and proper person to be admitted as an attorney because he had previous convictions for possessing dagga and said he would continue using it. The possession and use of cannabis is prohibited by the Drugs and Drug Trafficking Act and the Medicines and Related Substance Control Act (the Acts). His appeal to the SCA challenged criminalising dagga but shifted to a plea for a religious exemption for adult Rastafari. The SCA held it had no power to make such an exception and the plea was renewed in the Constitutional Court. The Western Cape Attorney General (the A-G) contended that the exemption would give rise to practical policing difficulties while the appellant argued that the prohibition infringed his right to personal freedom and bodily integrity, to freedom of religion, the right not to be discriminated against and the right to choose a profession.

Justice Ngcobo on behalf of a unanimous court found that both sides had failed to produce sufficient evidence to determine whether a religious exemption was possible and to address the concern of the government on the abuse of drugs. The court needed to know the nature of the Rastafari religion and the various uses of dagga; how much was used by Rastafari; how it was obtained; and whether the religion regulated, restricted and supervised use by its members. The A-G, for his part, had only made bare allegations regarding the difficulties in policing the exemption.

In considering whether the parties should be allowed to submit further evidence, the court had regard to, amongst other things, that the Acts in issue serve an important public interest; the rights asserted are of fundamental importance and go beyond his narrow interests; the validity of the Acts has been fully canvassed by a full bench of the High Court and five judges of the SCA; the initial challenge had been to the decision of the Law Society and not the constitutionality of the impugned provisions; and that the appellant is a person of limited resources.

On the question of the validity of the SCA proceedings, the Court found that the interim Constitution had expressly deprived the SCA of all constitutional jurisdiction regarding the validity of Acts of Parliament. Therefore the section requiring eleven judges of the SCA to sit when dealing with the validity of Acts of Parliament was inconsistent with the interim Constitution and became of no force or effect when that Constitution came into operation. The proceedings before the SCA were therefore not a nullity.