

IN THE NORTH GUATENG HIGH COURT
(PRETORIA)

CASE NO. 58668/11

In the matter between:

JULIAN CHRISTOPHER STOBBS	First Plaintiff
KATHLEEN (MYRTLE) CLARKE	Second Plaintiff

and

NATIONAL DIRECTOR OF PUBLIC PROSECUTION	First Defendant
MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT	Second Defendant
MINISTER OF HEALTH	Third Defendant
MINISTER OF SOCIAL DEVELOPMENT	Fourth Defendant
MINISTER OF INTERNATIONAL RELATIONS AND CORPORATION	Fifth Defendant
MINISTER OF TRADE AND INDUSTRY	Sixth Defendant
MINISTER OF POLICE	Seventh Defendant

DEFENDANTS' PLEA

The defendants plead to the particulars of the plaintiffs' claim as is more fully set out below.

A Positive statement

AVERMENT → P's OF

2

1. **Ad paragraphs 1.1 and 1.2**

The defendants admit the averments in these paragraphs.

2. **Ad paragraphs 1.3 to 1.8**

2.1. The defendants do not have knowledge of the averments in these paragraphs.

2.2. The defendants call upon the plaintiffs to prove the averments in these paragraphs.

3. **Ad paragraphs 2.1 and 2.2**

The defendants admit the averments in these paragraphs.

4. **Ad paragraphs 2.3 to 2.6**

4.1. The defendants do not have knowledge of the averments in these paragraphs.

4.2. The defendants call upon the plaintiffs to prove the averments in these paragraphs

5. **Ad paragraphs 3 to 9**

The defendants admit the averments in these paragraphs.

6. **Ad paragraphs 10.1 and 10.2**

6.1. The defendants do not have knowledge of the averments in these paragraphs, and call upon the plaintiffs to prove them.

6.2. The defendants plead that:

6.2.1. Cannabis is, to the knowledge of the plaintiffs, a drug or dependence producing substance whose possession and/or use is illegal.

6.2.2. On their version, the plaintiffs have used and/or made available Cannabis in the knowledge that it was illegal to do so.

6.2.3. The plaintiffs knew or ought to have known, long ago, or at least as early as January 2002, when the Constitutional Court delivered its judgment in *Prince v President, Cape Law Society and Others*¹ (“the Prince judgment”) that;

6.2.3.1. a constitutional challenge was directed at the laws which prohibit, amongst others, possession and use of Cannabis, including the relevant provisions of the Drugs and Drug Trafficking Act, 140 of 1992, as amended (“the Act”);

6.2.3.2. the Constitutional Court considered but dismissed the constitutional challenge to those laws, including the Act.

6.2.4. The constitutional complaints against the provisions of the Act asserted by the plaintiffs in these proceedings is the same or substantially similar to those that have been considered and dismissed by the Constitutional Court in *the Prince judgment*.

¹ 2002 (2) SA 794 (CC).

6.2.5. In the premises, the plaintiffs are precluded from instituting the present action in which they raise constitutional complaints which are the same or substantially similar to those that have been dealt with and decided in *the Prince judgment*.

7. The defendants also plead that by reason of the facts and circumstances set out in paragraphs 6.2.1 to 6.2.4 the plaintiffs inordinately and unreasonably delayed the institution of the present action, and it is just and equitable that their constitutional complaint should not be entertained.

8. **Ad paragraphs 10.3 to 10.5**

The defendants admit the averments in these paragraphs.

9. **Ad paragraph 10.6**

9.1. The defendants admit that the plaintiffs instituted the constitutional challenge against the provisions of sections 4(b), 5(b) of the Act read together with Part III of Schedule 2 thereof, on the strength of the order granted by Mr Justice Bertelsmann,

on the grounds set out in paragraphs 10.6.1 to 10.6.4 of the particulars of claim.

- 9.2. The defendants plead that the plaintiffs' constitutional challenge on the aforesaid grounds is mistaken, and not based on any credible factual foundation.

10. **Ad paragraphs 10.7 and 10.8**

- 10.1. The defendant denies the averments set out in these paragraphs.

- 10.2. The defendants plead that there is no public interest which justifies the constitutional complaints asserted by the plaintiffs.

- 10.3. Furthermore, the defendants plead that:

- 10.3.1. the plaintiffs have not described or identified the persons referred to in paragraph 10.7.1 of the particulars of claim;

10.3.2. the plaintiffs have also not described the basis on which those persons are unable to act in their own name or on their behalf.

11. **Ad paragraph 11**

The defendants do not dispute the averments in this paragraph.

12. **Ad paragraphs 12.1 to 12.3**

The defendants do not have knowledge of the averments in these paragraphs, do not admit them, and require the plaintiffs to prove them.

13. **Ad paragraphs 12.4 to 12.8**

The defendants admit the averments made in these paragraphs.

14. **Ad paragraph 12.9**

14.1. The defendants take note of the limited basis on which the plaintiffs challenge the constitutional validity of the relevant provisions of the Act.

14.2. The defendants nevertheless plead that the constitutional challenge asserted by the plaintiffs is unfounded.

15. **Ad paragraphs 13.1 to 13.3.2**

15.1. The defendants deny the averments made in these paragraphs.

15.2. The defendants plead that:

15.2.1. the use and possession of Cannabis is harmful to the health and social well-being of members of the public, including persons in whose presence the plaintiffs use Cannabis, or to whom the plaintiffs make it available;

15.2.2. Cannabis is a drug or dependence producing substance which negatively affects the psychological well-being of those who use it;

15.2.3. the use and possession of Cannabis by the plaintiffs, for the purposes asserted by them, is far outweighed by the risks arising from the use and possession thereof;

15.2.4. the use and possession of Cannabis entails significant costs to the families of persons affected by such use and possession, society and the economy generally;

15.2.5. there is a substantial illicit trade within South Africa and abroad of Cannabis and law enforcement agents in South Africa have a legitimate governmental purpose to combat such illicit trade.

16. **Ad paragraphs 14 to 24**

16.1. The defendants deny the averments in these paragraphs.

16.2. The defendants plead that the prohibition contained in the impugned provisions of the Act is justifiable in terms of section 36 of the Constitution, having regard to the following:

- 16.2.1. there are several open and democratic societies which prohibit the use and possession of Cannabis in the manner similar to the impugned provisions of the Act. These include member states of the Southern African Development Community who adopted the SADC Protocol on Combating Illicit Drugs through its Drug Control Committee in 2001, 2002 and 2003;
- 16.2.2. the prohibition on the use and possession of Cannabis is achieved by the provisions of the Act which apply generally to all users and possessors, regardless of the reason for such possession or use;
- 16.2.3. the prohibition applies equally to all possessors and users, without any undue discrimination or unfair disadvantage;
- 16.2.4. the purpose of the prohibition is to protect the health and psychological well-being of persons affected by the use and possession of Cannabis;
- 16.2.5. furthermore, the purpose of the prohibition is to combat drug trafficking domestically and abroad,

and to enable the government of South Africa to fulfill its international obligations to combat the illicit trafficking of Cannabis;

16.2.6. the prohibition of Cannabis by means of criminal sanction is rationally related to the purpose of that prohibition, in order to discourage the use and possession of Cannabis;

16.2.7. there are no less restrictive means to achieve the purpose of the prohibition, in as much as;

16.2.7.1. it is practically difficult and impossible to distinguish the limited purpose for which the plaintiffs seek to possess and use Cannabis, and other purposes;

16.2.7.2. it is also practically difficult for law enforcement agents to police the limited use for which the plaintiffs seek to possess and use Cannabis;

16.2.7.3. the ability to law enforcement agents to enforce the provisions of the Act would be impaired, should the plaintiffs be allowed to possess and use Cannabis for the asserted limited purpose.

16.3. In the premises, the defendants plead that there is a justifiable basis to enforce the prohibition contained in the impugned provisions of the Act.

17. **Ad paragraphs 25**

The defendants take notice of the averments in this paragraph.

WHEREFORE, the defendants pray that the plaintiffs' claim be dismissed with costs.

DATED AT SANDTON ON THIS THE 26TH DAY OF JANUARY 2012.

p.p. Hutamo T.S.

Adv I V Maleka SC

Counsel for Defendants

Hutamo T.S.

Adv T B Hutamo

Counsel for Defendants