

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE No: CCT/ 36/00

In the matter between:

GARRETH ANWER PRINCE

Applicant/Appellant

and

***THE PRESIDENT OF THE LAW SOCIETY OF THE
CAPE OF GOOD HOPE***

First Respondent

THE LAW SOCIETY OF THE CAPE OF GOOD HOPE

Second Respondent

***THE SECRETARY OF THE LAW SOCIETY OF THE
CAPE OF GOOD HOPE***

Third Respondent

THE MINISTER OF JUSTICE

Fourth Respondent

***THE ATTORNEY-GENERAL OF THE CAPE OF
GOOD HOPE***

Fifth Respondent

5th RESPONDENT'S SUMMARY

1. The Appellant's relief that he seeks has now crystallised into the following:

that an exemption be made for adult Rastafari to use and possess cannabis for the *bona fide* observance of their religious practice, despite the restrictions on such use and possession by *sec 4(b)* of *Act 140/1992* and *sec 22A(10)(a)* and *Act 101/1965*.

(ii)/.....

2. He avers that the over-broad and unjustifiable legislation violates his religious rights (*sections 15(1) and 31(1)(a) of the Constitution*), as well as his individual rights in terms of *sections 9, 10, 12(2), 22 and 30 of the Constitution*.
3. He avers that the legislation is disproportionate to the “harm” caused by cannabis.
4. 5th Respondent counters this by averring:
 - (a) that exemptions in general are neither legally nor practically possible;
 - (b) that the specific exemption asked for (in respect of adult Rastafari) is wholly impractical to implement. It would also have an unfair and discriminatory effect on the rest of the population;
 - (c) that exemptions can only be granted by Parliament, and the note to *sec 31* of the *Constitution* and many decided cases, confirm this;
 - (d) that the foreign case law, foreign constitutions and our Constitution [*sections 30 and 31(2)*] recognise the limitations placed on the practices of religions [religious beliefs are not affected];

(iii)/.....

- (iii) -

- (e) that cannabis is an hallucinogenic and does cause “harm”;

- (f) that it features strongly in the commission of violent crime in the R S A;
- (g) that we have international obligations (which are recognised by *sec 233* of our *Constitution*);
- (h) that the legislation is not over-broad, and that it can be justified;
- (i) that Appellant has not discharged his *onus*;
- (j) that the Rastafari religion discriminates against women, and this in turn affects the scope of any infringement (if it does not negate any infringement completely);
- (k) that cannabis poses a risk to adolescents and children, and its use could be a “stepping stone” to more dangerous drugs;
- (l) that an exemption would infringe the entrenched rights of children [*sec 28(1)(d)*, read with *sec 24(a)* of the *Constitution*].

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