

Explanatory Note

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

This case was referred to the Constitutional Court by the Witwatersrand Local Division of the Supreme Court (the WLD). It relates to a conviction in the Regional Court of a contravention of s 37 of the General Law Amendment Act 62 of 1955. The section, in essence, provides that after the prosecution has proved that an accused received stolen goods, the accused has to prove that at the time he or she believed - and had reasonable grounds for believing - that the person from whom the goods were received owned them or was authorised by the owner to dispose of them. The section thus casts a burden of proof on an accused in such circumstances.

On appeal to the WLD the appellant challenged his conviction solely on the factual findings of the trial court, but the appeal court raised the question whether s 37 was unconstitutional because of the partial reversal of the burden of proof. It then decided to refer that question to the Constitutional Court under s 102(1) of the interim Constitution.

The Court ruled that the WLD erred in not first dealing with the case on the facts and other non-constitutional issues, which may have disposed of the matter. Until that had been done it could not be said that the constitutional issue was decisive for the case or that a referral would be in the interests of justice. In principle, cases should not be decided on constitutional grounds unless it is necessary to do so.

The case was accordingly sent back to the WLD to be dealt with along the lines indicated by the Court.

The judgment of the Court was delivered by Kriegler J and was concurred in by the other members of the Court.