



It's high time we took cannabis seriously!

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The recent Constitutional Court ruling in the matter of ***Minister of Justice and Constitutional Development and others v Prince and others* [2018] JOL 40399 (CC)** (the Prince matter) was welcomed by many South Africans. The highest court in the land held that sections 22(A)(9)(a)(i) & 22A (10) of the Medicines and Related Substances Control Act 101 of 1965 ("the Medicines Act"), and sections 4(6) and 5(b) of the Drugs and Drug Trafficking Act 140 of 1992, limited the constitutional right to privacy, *inter alia*, "...only to the extent that they prohibit the use of cannabis by an adult in private dwellings where the possession, purchase or cultivation of cannabis is for personal consumption by an adult". (***Prince v Minister of Justice and Constitutional Development and others and related matters* [2017] 2 All SA 864 (WCC)**)

A few days after this judgment, a CCMA ruling in the matter of ***Mthembu and others / NCT Durban Wood Chips* [2019] 4 BALR 369 (CCMA)** was handed down. In this matter, several employees were dismissed for misconduct in the form of the consumption of drugs, specifically cannabis. Despite having had knowledge of and signing the company's Substance Abuse Policy which had been in place since 2016, there were initially eight employees who tested positive for cannabis, during a substance test in 2017. Further lab tests revealed that only four of these employees actually tested positive for cannabis, one of whom was a casual employee who was dismissed immediately. The remaining three employees brought the present application in the CCMA after having been charged with being "Under the influence of intoxicating substances whilst on duty". Following a disciplinary hearing conducted by the respondent, which resulted in their dismissal, these three employees challenged the fairness of their dismissal. The CCMA Commissioner had to decide whether dismissal for misconduct of the applicants was substantively fair. Guidelines for a decision of this nature are provided in item 7 of Schedule 8 of the Labour Relations Act 66 of 1995 as follows:

7. Guidelines in cases of dismissal for misconduct.—Any person who is determining whether a dismissal for misconduct is unfair should consider—

(a) whether or not the *employee* contravened a rule or standard regulating conduct in, or of relevance to, the workplace; and

(b) if a rule or standard was contravened, whether or not—

(i) the rule was a valid or reasonable rule or standard;

(ii) the *employee* was aware, or could reasonably be expected to have been aware, of the rule or standard;

(iii) the rule or standard has been consistently applied by the employer; and

(iv) *dismissal* with an appropriate sanction for the contravention of the rule or standard."

The applicants, who worked for the respondent, a wood and chip factory, were exposed to large machines and vehicles. The first applicant was employed as a Weigh Bridge Clerk. His duties involved the inspection of large vehicles as well as being exposed to traffic. Applicant number two was responsible for the sharpening and polishing of knives and the third applicant was employed as a Log Deck assistant whose main function was to ensure that logs, weighing up to a maximum of 100kg landed correctly on the main floor area. The description of each of these duties emphasizes the importance of the incumbents being alert and being able to think and react quickly and smartly, should an emergency arise. This was confirmed in evidence given by Lenny Naidoo, who stated that their workplace "is dangerous with heavy machinery".

In their evidence, all three applicants testified that they were told that they could not smoke cannabis at work, and that they had complied with this – they had not smoked the substance at work. They had smoked it at home or privately.

Although the applicants did not seem to agree that their duties were as high risk as they were made out to be, it was found that considering the type of operations conducted by their employer, the respondent, it was reasonable to forbid employees from attending to their duties whilst being under the influence of cannabis.

The Commissioner found that the applicants had shown no genuine remorse for their actions. "It was a hollow apology with no commitment to not repeating the offence."

The dismissal of the applicants was found to be substantively fair.

I think it is safe to say that the Constitutional Court ruling in the Prince matter has given rise to many theories, fears and not to mention business plans, revolving around cannabis. At the recent SAAHIP conference in Pretoria, we learned that in April 2019, SAHPRA announced that the first three licences permitting the sale of medicinal cannabis would be issued. We are likely to see many more of these, as a result of their backlog project. We were also reminded by Andy Gray, that the Medical Innovation Bill, which was aimed at giving the public access to medicinal cannabis, had been rejected.

Some may say that SA has followed international trends in legalizing the use of cannabis, and if this really is the case, what's next on the list? Well, Magic Mushrooms seem to be the next contender in line. The Western Cape High Court has already heard an application to make the possession and use of Magic Mushrooms (Psilocybin mushroom) legal. A Constitutional Court matter relating to the decriminalization of the Psilocybin mushroom is also said to be on the horizon, whilst according to a CNN report dated 5 June 2019 and a report by US News, dated 9 May 2019, the cities of Oakland (California, USA) and Denver (Colorado, USA) have both already decriminalized the use of Magic

Mushrooms (ie law enforcement cannot impose criminal penalties for the use of this drug).

If this is just the beginning of a new international trend, then it's definitely high time we took cannabis seriously.

References:

1. Minister of Justice and Constitutional Development and others v Prince and others [2018] JOL 40399 (CC);
2. Prince v Minister of Justice and Constitutional Development and others and related matters [2017] 2 All SA 864 (WCC);
3. Mthembu and others / NCT Durban Wood Chips [2019] 4 BALR 369 (CCMA);
4. Item 7, Schedule 8, Labour Relations Act 66 of 1995.
5. Online Article: Denver becomes first city to decriminalize "Magic Mushrooms". Hansen, C. [<https://www.usnews.com/news/national-news/articles/2019-05-09/denver-becomes-first-city-to-decriminalize-magic-mushrooms-in-narrow-vote>], Viewed on 2 July 2019;
6. Online Article: Oakland residents won't be busted for using "Magic Mushrooms" and other psychedelic drugs. Asmelash, L & Ahmed, S. CNN. [<https://edition.cnn.com/2019/06/05/health/oakland-decriminalizes-magic-mushrooms-trnd/index.html>], Viewed on 2 July 2019.