

SUPREME COURT OF APPEAL OF SOUTH AFRICA

PRESS RELEASE

3 September 2010

STATUS: Immediate

De Beer v Minister of Safety and Security (356/09) [2010] ZASCA 98 (3 September 2010)

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

The Supreme Court of Appeal today dismissed an appeal against a refusal to award damages in a claim brought against the police by the appellant, who was arrested for cultivating cannabis (dagga). The appellant alleged that he had a permit to cultivate the dagga for purposes of research but was arrested when he failed to produce the permit. He sued the police, alleging that his prosecution was malicious.

Growing cannabis may be lawful – if done in terms of a research permit. But a policeman who was informed that the appellant was growing cannabis (dagga) on his farm, allegedly under the authority of a permit, thought it was unlikely that a permit for the cultivation of dagga existed. He made enquiries and could find nothing to indicate that a permit for the cultivation of dagga could be issued.

He obtained a search warrant and went with colleagues to the appellant's farm. The appellant showed him his dagga plants and explained that he had a permit to do research. But he could not produce it. The policeman tried to contact someone referred to him by the appellant at the Agricultural Research Centre to find out about the existence of the permit. He was unsuccessful, as was a police legal adviser.

The policeman searched a house on the farm and found dagga seeds and leaves in various places in the house. He did not believe that research was being conducted there. On the advice of the police legal adviser he arrested the appellant and charged him with contravening the Drugs and Drug Trafficking Act. The appellant was detained overnight, and released on bail the following day.

Several months later a permit was found, issued to the Agricultural Research Centre by the Department of Health. The charges were withdrawn.

The appellant sued the Minister for damages for malicious prosecution. The North Gauteng High Court (Mavundla J) dismissed the action. It found that the policeman had reasonably believed that the appellant was committing offences having regard to the absence of evidence of any research at the farm. And he had not acted maliciously: that is, he had no intention to injure and had not acted recklessly. He had made attempts to establish whether there was indeed a permit, and had not been overhasty in arresting and charging the appellant.

The SCA dismissed an appeal against this finding, confirming that the policeman had reasonably believed that the appellant was contravening the Act, and that he had acted without malice.
