

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

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Mr Michael Hawthorne
Per Email: Michael@dagga.info

Our Ref.: AP6/05/2014
Provincial Ref.: GP/1314/0939

Date: 29 September 2014

Dear Sir,

RE: APPEAL TO THE CHIEF OPERATIONS OFFICER

The above matter and your letter of appeal received by our offices on or about the 5th day of May 2014 refers.

I kindly confirm receipt of the aforesaid letter and the contents thereof has been noted.

The South African Human Rights Commission (hereinafter referred to as the "Commission") was established to investigate *prima facie* violations of human rights as contained within the Bill of Rights, which is Chapter Two of the Constitution of the Republic of South Africa Act, 108 of 1996 (hereinafter referred to as the "Constitution").

In terms of Article 4 (2) (c) of the Commission's Complaints Handling Procedures:

"4 (2) The Commission may reject any complaint, which –

...

(c) is the subject of a dispute before a court of law, tribunal, any statutory body, any body with internal dispute resolution mechanisms, or settled between the parties, or in which there is a judgment on the issues in the complaint or finding of such court of law, tribunal, statutory body or other body."

Moreover, in terms of Article 12 (8) (a) of the Commission's Complaints Handling Procedures:

"If the Provincial Manager makes a finding that the complaint does not fall within the jurisdiction of the Commission, or could be dealt with more effectively or expeditiously by another organisation, institution, statutory body or institution created by the Constitution or any applicable legislation, the complaint must ... be referred to such appropriate organisation, institution or body ... and the complainant must ... be notified thereof, in writing, and be provided with the contact details of such appropriate organisation, institution or body."

On perusing the file in this matter I kindly note that the initial complaint raised the issue regarding the criminal prohibition on the use of cannabis and the alleged resultant discrimination against persons who choose to use it for medicinal purposes.

You approached the Legal Services Unit of the Gauteng Provincial Office of the Commission with a request that it assist you in resolving your complaint.

On or about the 10th day of April 2014 I note that the Provincial Office advised you that this issue has recently been raised in Parliament for discussion, and whilst the Commission cannot pass a new law, the

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Chairperson: M L Mushwana; **Deputy Chairperson:** P Govender; **Commissioners (Full-Time):** B Malatji, L Mokate; M S Ameerma
Commissioners (Part-Time): J Love, D Titus;
Chief Executive Officer: A K Ahmed

Commission will continue to monitor the topic and should a new law be tabled, the Commission will engage with Parliament to ensure that it complies with human rights.

The Provincial Office was of the view that there was nothing further it could do in this matter and proceeded to close your file.

With regards to the provisions of both the Constitution and the Human Rights Commission Act, 54 of 1994, the Commission's Legal Services Unit is charged with the duty to investigate complaints of human rights violations and the manner within which this is dealt with is determined in its Complaints Handling Procedures.

After a thorough analysis and due consideration of your complaint I confirm that the Commission may refer any matter that could be dealt with more effectively and expeditiously by another organisation, statutory body or institution, and further that the Commission may reject any complaint in which there is a judgment in the issue.

I note that in your letter of appeal you alleged that the current law violate a number of human rights, including the right to dignity, life, equality, freedom of religion, amongst others.

The issue relating to the alleged unfair discrimination of the criminalisation of cannabis on the ground of religion has already been dealt with by the Constitutional Court in *Prince v President of the Law Society of the Cape of Good Hope (CCT36/00) [2002] ZACC 1*. The Commission does not have the jurisdiction to review or override a decision made by the Constitutional Court as this decision is final.

Further, the Commission does not possess the expertise to conduct an investigation into the medicinal properties of cannabis and whether the proposed benefits outweigh the potential dangers. The decision as to whether or not to legalise the medicinal use of cannabis does not purely relate to human rights considerations, but rather to wider policy implications. Consequentially, the Commission is not the correct body to deal with this matter, but its decision to continue to monitor the situation and to ensure that the human rights considerations are taken into account should a bill be tabled in Parliament is within the Commission's mandate is correct.


Further, the Commission does not have the power to invalidate a law, and therefore you are therefore advised to consult with a private attorney should you wish to take the matter to court for adjudication.

Accordingly, your appeal is dismissed and this decision is final.

Should you not be satisfied with this finding then kindly be advised that you may challenge same in court through the process of judicial review.

An application for judicial review must be made within 180 days of the date on which all internal remedies were exhausted. Where there are no internal remedies available, the application must be made within 180 days of the date on which the applicant became aware of the decision (or could reasonably be expected to have become aware of the decision). A person who asks for judicial review after this period will not be successful, unless they can convince the court to that it is "in the interests of justice" to allow it.

Yours faithfully,



THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION
CHIEF OPERATIONS OFFICER

CC PROVINCIAL MANAGER, GAUTENG PROVINCE
THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION