

S v Mpfu & Another	
Project code	ZIM1
URL	https://old.zimlil.org/zw/judgment/constitutional-court-zimbabwe/2016/5
Citations	(CCZ 5/2016 Const. Application No CCZ 08/13) [2016] ZWCC 16 (15 June 2016)
Country	Zimbabwe
Date of judgment	15 June 2016
Court	Constitutional Court
Location	Harare
Case type	Application for leave to appeal/ Referral
Result	Declined
Flynote	Human rights and fundamental freedoms - the right to personal liberty and the protection of the law
Legislation and International Instruments	<p>Legislation</p> <ul style="list-style-type: none"> • Sections 15 and 79 of the Criminal Code. • Sections 18 and 23 of the former Constitution.
Cases cited as authority	<ul style="list-style-type: none"> • <i>The Sunday Times v The United Kingdom</i> 1979-80 2 EHRR 245 at 271 (para 49). • <i>Zimbabwe Township Developers v Lous Shoes</i> 1983 (2) ZLR 376 (S) at 382-383A). • <i>S v Banana 2000</i> (1) ZLR 607 (S) at para 635. • <i>Nyambirai v National Social Security Authority and Anor</i> 1995 (2) ZLR 1 (S) at 13 D-F.
Facts	<p>This matter determined the constitutionality of section 79 of the Criminal Law (Codification and Reform) Act, [Chapter 9:23] (“the Code”), particularly, whether it violated the applicants’ right to protection of the law and their right not to be discriminated against in terms of sections 18 and 23 of the former Constitution of Zimbabwe.</p> <p>The first applicant, a 42-year-old man, was charged with intentionally transmitting HIV/AIDS to his wife. He argued that the law he was charged under was overly broad, infringing upon his right to legal protection and discriminating against him based on his HIV status. He requested the referral of his case to the Constitutional Court.</p> <p>The second applicant, a 34-year-old woman, was accused of transmitting HIV to her husband without disclosing her status. She was convicted, and her case was also referred to the Constitutional Court, raising similar arguments as the first applicant.</p>
Summary	The majority decision of the Constitutional Court majority held that the applicants failed to prove the

	<p>unconstitutionality of section 79 of the Code. Section 79 encompassed both actual and constructive intent, applying to those who intentionally infect others and those who act recklessly. The court emphasized that the provision specifically targets these two categories only. They further explained that the definition of "real risk or possibility" in section 15 removed any ambiguity by including awareness and recklessness. According to the court, section 79 was sufficiently clear for individuals to comprehend and anticipate the consequences of their actions.</p>
Decision/ Judgment	The applications were dismissed.
Basis of the decision	The court unanimously held that the applicants had failed to prove that section 79 of the Code was unconstitutional.
Reported by Date	Luxolo Tomsana 15 June 2023