



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

### **MEDIA SUMMARY: JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

**FROM:** The Registrar, Supreme Court of Appeal

**DATE:** 4 February 2022

**STATUS:** Immediate

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

---

*Deltamune (Pty) Ltd and Others v Tiger Brands Limited and Others (Case no 847/2020) [2022] ZASCA 15 (4 February 2022).*

Today, the Supreme Court of Appeal (the Court) upheld an appeal against an order of the Gauteng Division of the High Court, Johannesburg (the high court), which had upheld the validity and enforceability of subpoenas to produce documents issued by the respondents, Tiger Brands Limited and its two operating subsidiaries, Enterprise Foods (Pty) Limited and Tiger Consumer Brands Limited (collectively referred to as 'Tiger Brands'). Tiger Brands faces a certified class action in the high court as a result of the outbreak of listeriosis in South Africa between January 2017 and 3 September 2018. A number of people across the country contracted an infection of the bacterium *Listeria monocytogenes* (*L. mono*) as a result of consuming contaminated ready-to-eat meat products produced by Tiger Brands at its Polokwane facility. The subpoenas were issued pursuant to the class action, and required the recipients to produce swathes of documents, items and things, mainly in respect of test results conducted for the *L. mono*.

The recipients of the subpoenas were the following: the first appellant, Deltamune (Pty) Ltd (Deltamune); the fourth appellant, Federated Meats (Pty) Ltd and fifth to tenth appellants (the Federated Meats appellants); the twelfth appellant, the National Health Laboratory Services (the NHLS), as well as the fourteenth appellant, Aspirata (Pty) Ltd (Aspirata). The subpoenas were issued in terms of s 35(1) of the Superior Courts Act 10 of 2013, read with rule 38 of the Uniform Rules of Court which regulates the procedure for the procurement of evidence by subpoena. No subpoenas were issued against the second appellant, the Red Meat Industry Forum (the Meat Forum), the third appellant, the Association of Meat Importers and Exporters (the Meat Association) and eleventh appellant, Famous Brands Management Company (Pty) Ltd (Famous Brands). Their involvement in the matter was purely to the extent that their interests could be affected by the subpoenas. None of the appellants were party to the class action.

The Court considered two issues in respect of the subpoenas, namely relevance and specificity. The latter was only in respect of NICD. Central to Tiger Brands' case on relevance was its assertion that the class action would focus on establishing whether it was the sole cause of the listeriosis outbreak. Tiger

Brands' submissions in this regard were as follows: because the class plaintiffs alleged that Tiger Brands was a source of the listeriosis outbreak through its Polokwane facility, this necessitated an enquiry whether it was the sole source of the outbreak. Tiger Brands contended that, if it was the sole source of the outbreak, then it was responsible for the harm suffered by all the victims of the outbreak. The individual class members would merely have to prove that they were victims of the outbreak to prove that Tiger Brands was responsible for the harm they had suffered.

The Court considered the terms of the certification order, in terms of which the class action would proceed in two stages. The first stage only concerned declaratory relief in respect of Tiger Brands' liability to the four certified classes. The second stage applied only to those classes in respect of which Tiger Brands' liability would have been established in the first stage, namely, whether Tiger Brands should be held liable to the classes for any provable damages arising as a result of the consumption of contaminated food products that originated from, or passed through, the Polokwane facility during the relevant time period. The Court concluded that the focus of the class action was only on those whose damages resulted from consuming those products. It was therefore irrelevant for purposes of the class action, whether other persons were harmed by the consumption of products manufactured by anyone other than Tiger Brands through its Polokwane facility. Therefore, the Court concluded that Tiger Brands' 'sole source' argument had no relevance in the class action.

With regard to specificity, the Court considered that the language of the subpoenas was overbroad, and concluded that the amended subpoena against the NICD lacks the necessary specificity.

Accordingly, the Court, per Makgoka JA (with Zondi, Mokgohloa, Gorven JJA and Meyer AJA concurring), upheld the appeals with costs, including costs of two counsel where so employed.

--END--