

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: 29 November 2012

Status: Immediate

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.

**Children's Resource Centre Trust & others v Pioneer Food & others**

The SCA has referred back to the Western Cape High Court an application by a number of NGOs and five individual consumers for the certification of a class action against three of the major bread producers, Pioneer, Premier and Tiger arising out of anti-competitive conduct that occurred in the Western Cape at the end of 2006. The Court held that class actions should be recognised, not only in respect of constitutional claims, but also in any other case where that would be the most appropriate means of litigating the claims of the members of the class. It then laid down the requirements for such an action, commencing with the need for certification by the court at the outset before the issuing of summons. These are that the court asked to certify such an action must be satisfied that there is an objectively identifiable class; a cause of action raising a triable issue, and common issues that can appropriately be dealt with in the interests of all members of the class. There must be appropriate procedures for distributing damages to the members of the class and the representatives must be suitable to conduct the litigation on behalf of the class.

In remitting the case to the high court the SCA held that the issue of certification must be determined on complete papers and these must

include draft particulars of claim and affidavits indicating that there is a prima facie case on the merits. The application had been dealt with as a matter of urgency and as a result the respondent bread producers had not been able to put their full case before the court. The appellants' case had changed during the course of the litigation. Its definition of the proposed class was over-broad and the relief it sought inappropriate. However its claim was potentially plausible and as this was the first time that the SCA had laid down the requirements for bringing a class action it was appropriate to afford the appellants an opportunity to remedy the flaws in their papers in compliance with these new requirements. Once they had done so the respondents would have the opportunity to put their full case before the court and the application could be dealt with in accordance with the procedures laid down by the SCA.