



CONSTITUTIONAL COURT OF SOUTH AFRICA

Cherangani Trade & Invest 107 (Pty) Ltd v Alan Clifford Mason NO and Others

**Case No: CCT 116/09
[2011] ZACC 12**

Decided on: 8 April 2011

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On 8 April 2011 the Constitutional Court delivered judgment in an application for leave to appeal, which required the Court to interpret the provisions of section 89(5)(c) of the National Credit Act (NCA). This provision provides for the cancellation or forfeiture of rights under unlawful credit agreements. The High Court had declared all the applicant's rights against Alan Clifford Mason, in terms of certain agreements, forfeited to the State. The applicant could possibly lose more than R2 million because of the forfeiture. Mr Mason's estate had since the date of the High Court order, been sequestrated, and his estate was represented at the hearing by the estate's Trustees.

The applicant, who was not a registered credit provider in terms of the NCA, had granted loans of more than R2 million to a trust and Mr Mason. It contended before this Court that section 89(5)(c) of the NCA, in terms of which the forfeiture had been made, should have been interpreted by the High Court so that courts are given a discretion to make the forfeiture order.

The application for leave to appeal was refused with costs because, although there may be some difficulty arising from the High Court judgment and order—

- the interpretation the applicant now advanced was not raised in the High Court and it would be undesirable for the Constitutional Court to be the Court of first and last instance;
- the State had not been joined in the High Court proceedings although it had a direct and substantial interest in the matter; and

- the applicant had not shown that the forfeiture order had prejudiced it disproportionately.