



CONSTITUTIONAL COURT OF SOUTH AFRICA

Imraahn Ismail Mukaddam v Pioneer Foods (Pty) Ltd and Others

Case CCT 131/12

**Date of Hearing: 07 May 2013
Date of Judgment: 27 June 2013**

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.

This morning, the Constitutional Court handed down a judgment upholding an appeal against a decision of the Supreme Court of Appeal.

In November 2012 Mr Imraahn Mukaddam (applicant) and other distributors of bread instituted proceedings in the Western Cape High Court, Cape Town (High Court) for permission to bring a class action against the respondents, who are producers of bread.

In 2006 the Competition Commission launched an investigation into the conduct of the respondents following complaints by Mr Mukaddam and others. The respondents were found guilty of engaging in anti-competitive conduct.

In the High Court, Mr Mukaddam indicated that he planned to bring three claims against the respondents, based on their anti-competitive behavior. He stated that he would bring the actions in his own interest and on behalf of the other distributors. The High Court refused to allow him to bring a class action. His appeal to the Supreme Court of Appeal was unsuccessful. That Court held that the claims he intended to pursue were bad in law and that he had failed to establish exceptional circumstances for instituting a class action.

In a majority judgment written by Jafta J, the Constitutional Court overturned the judgments of the High Court and the Supreme Court of Appeal, holding that the High Court had applied the incorrect test to Mr Mukaddam's request. It pronounced that

the correct standard was to determine if the institution of a class action would be in the interests of justice.

Mhlantla AJ concurred in the judgment of Jafta J save for parts of the judgment that circumscribe the reach of certification in class actions involving Bill of Rights claims. In her view, given the rationale for certification and the nature of class actions, the benefits of the certification process apply in all class action suits.

In a separate concurring judgment Froneman J, with whom Skweyiya J concurred, noted that the development of the common law to make provision for class actions in non-constitutional matters, undertaken by the Supreme Court of Appeal in the *Children Resources Centre Trust* case ([2012] ZASCA 182), was a valuable contribution to the law, providing the courts with flexible guidelines to apply in applications for the certification of class actions, on a case-by-case basis. He was, however, of the view that the Supreme Court of Appeal's application of these guidelines to the applicant's potential claim in the proposed class action was too strict. Froneman J held further that it would be premature finally to determine, at this early stage of certification, that the applicant had no tenable claim in our law.