

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

**Hekpoort Environmental Preservation Society and another v Minister of Land
Affairs and others**

Case CCT 21/97

Decided on 08 October 1997

Media Summary

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

The first applicant applied to the TPD for an order preventing Hekpoort Foods CC, a sorghum beer manufacturer from carrying on its activities. It alleged that Hekpoort Foods was polluting the underground water supply, thus irreversibly damaging the environment, an allegation denied by Hekpoort Foods. The first applicant disregarded certain rules of court and a costs order was granted against it. Ultimately the High Court held that the Society could only continue with its application if it gave security for legal costs incurred by the other parties in defending the case against them.

The first applicant then applied for direct access to the Constitutional Court. It alleged that the order of the High Court prevented it from having the case heard because it did not have enough money to secure the costs. This, it argued, effectively denied it access to the courts in order to protect the public interest in preserving the environment.

The Constitutional Court refused direct access, emphasizing that direct access is permissible only in exceptional circumstances. In this case the stringent requirements of the rule 17 of the Constitutional Court rules allowing direct access had not been met. The Court added that the High Court application was still pending before that court. The Constitutional Court could not take the matter over and dispose of it as if it were the court hearing the matter for the first time. The facts relied upon by the applicant to support its allegation that the environment was being polluted were in dispute. It was not the role of the Constitutional Court to resolve disputed facts by hearing oral evidence. This would only be appropriate in the most exceptional circumstances and this was not such a case. Further the applicant's complaint - that the order for security for costs denied it access to the courts - should have been raised in the High Court when the application for security for costs was brought.

The judgment of the Court was delivered by Ackermann J and was concurred in by the other members of the Court.