

# Consumer action against bread cartel a step closer

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An application for a class action against three Western Cape breadmakers - Pioneer Foods, Premier Foods, and Tiger Consumer Brands - was referred back to the high court by the Supreme Court of Appeal on Thursday.

The appeal by Western Cape consumers against the court's refusal to certify them as a class has been upheld and the application to be certified has been sent back to the high court for a determination.

Judge Robert Nugent on Thursday, 29 November 2012, set out the principles for the high court on which the application must be determined.

The consumers have been given two months to supplement their application to remedy some of the shortcomings identified by the appeal court in their original filings.

The Competition Tribunal found Tiger Brands, Pioneer Foods and Foodcorp guilty of cartel conduct, paving the way for civil claims by those harmed.

Premier Foods was granted leniency from prosecutions, but was added as a respondent in the certification applications.

The Children's Resource Centre, the Black Sash Trust, the Congress of South African Trade Unions and the National Consumer Forum brought an application for a class certification order to the Western Cape High Court.

This was on behalf of customers prejudicially affected by the anticompetitive conduct of bread producers.

The initial certification application was dismissed on the grounds that the aggrieved parties had failed to make out a case for a sufficiently identifiable class of persons.

On readmitting the case in the high court, the appeal court said the issue of certification had to be determined on complete papers.

These had to include draft particulars of the claim and affidavits indicating that there was a prima facie case on the merits.

The appeal court held the application had been dealt with as a matter of urgency, and as a result the breadmakers had not been able to put their full case before the court.

It was held that the appellants' case - the NGOs and individuals - had also changed during the course of the litigation.

The court found the proposed class action was also overly broad and the relief it sought inappropriate.

However, the appeal court held the group's claim was potentially plausible, and with the court laying down the requirements for a class action, it was appropriate to afford them an opportunity to correct the flaws in the court papers in line with the new requirements.

The case could then continue in the high court with the requirements laid down by the appeal court on Thursday.

Source: *Business Day* with Sapa

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