



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Case No: 20147/2014

In the matter between:

PREMIER FOODS (PTY) LTD

APPELLANT

and

NORMAN MANOIM NO

1ST RESPONDENT

THE COMPETITION TRIBUNAL

2ND RESPONDENT

THE COMPETITION COMMISSION

3RD RESPONDENT

**THE TRUSTEES FOR THE TIME BEING
OF THE CHILDREN'S RESOURCE
CENTRE TRUST**

4TH RESPONDENT

**THE TRUSTEES FOR THE TIME BEING
OF THE BLACK SASH TRUST**

5TH RESPONDENT

**CONGRESS OF SOUTH AFRICAN
TRADE UNIONS**

6TH RESPONDENT

NATIONAL CONSUMER FORUM

7TH RESPONDENT

TASNEEM BASSIER

8TH RESPONDENT

BRIAN MPAHLELE	9TH RESPONDENT
TREVOR RONALD GEORGE BENJAMIN	10TH RESPONDENT
NOMTHANDAZO MVANA	11TH RESPONDENT
FARIED ALBERTUS	12TH RESPONDENT

**Neutral citation: *Premier Foods v Manoim NO* (20147/2014) [2015]
ZASCA 159 (4 November 2015)**

**Coram: Maya ADP, Shongwe and Petse JJA and Gorven and
Baartman AJJA**

Heard: 29 September 2015

Delivered: 13 January 2016

JUDGMENT ON AMENDED ORDER

On appeal from Gauteng Provincial Division of the High Court, Pretoria
(Kollapen J sitting as court of first instance):

1 The appeal is upheld with costs, including those consequent on the employment of two counsel.

2 The order of the court *a quo* dismissing the application with costs is set aside and the following order substituted:

‘1 Declaring that neither the first nor the second respondent can lawfully issue a notice in terms of section 65(6)(b) of the Competition Act 89 of 1998, certifying that the applicant’s conduct has been found to be a prohibited practice under the

Act in Competition Tribunal of South Africa case numbers 15/CR/Feb07 and 50/CR/May08.

2 The third respondent is directed to pay the costs of the Applicant.’

JUDGMENT

Gorven AJA (Maya ADP, Shongwe and Petse JJA and Baartman AJA concurring):

[1] In this matter, an order was granted in terms of which the second and third respondents were ordered to pay the costs in the court below. No specific argument on the costs order was heard, the assumption being that costs would follow the result. This is a correct assumption in the present instance. When the original costs order was handed down, it was overlooked that the second respondent (the Tribunal) had taken no part in either the court *a quo* or in this court. Accordingly, the order directing that they pay costs in the court *a quo* along with the third respondent (the commission) was a patent error. This court has been approached to correct that patent error and to amend the order, as is in its power. As a consequence, the order is amended to read as follows:

1 The appeal is upheld with costs, including those consequent on the employment of two counsel.

2 The order of the court *a quo* dismissing the application with costs is set aside and the following order substituted:

‘1 Declaring that neither the first nor the second respondent can lawfully issue a notice in terms of section 65(6)(b) of the Competition Act 89 of 1998, certifying that the applicant’s conduct has been found to be a prohibited practice under the Act in Competition Tribunal of South Africa case numbers 15/CR/Feb07 and 50/CR/May08.

2 The third respondent is directed to pay the costs of the Applicant.’

T R Gorven
Acting Judge of Appeal

Appearances

For the Appellant: D Unterhalter SC (with him M Du Plessis and L Kelly)

Instructed by:

Nortons Inc., Sandton

McIntyre & Van der Post, Bloemfontein

For the 3rd Respondent: G J Marcus SC (with him C Steinberg)

Instructed by:

Cheadle Tomson & Haysom Inc.,
Johannesburg

Webbers Attorneys, Bloemfontein

For the 4th to 12th Respondents: M M Le Roux

Instructed by:

Abrahams Kiewitz Attorneys, Cape Town

Honey Attorneys, Bloemfontein