

Dairy case to go ahead

The Competition Tribunal said on Wednesday, 18 March 2009, that although it ruled that two summonses issued by the Competition Commission against Woodlands and Milkwood milk processors in the Clover milk price fixing case were void for being "vague and overbroad", it had imposed a novel remedy in the case.



It made a preservation order requiring its registrar to retain copies of the documents seized until the Commission determined whether it wished to issue a new summons that complied with the law.

"A preservation order is issued to balance the right to privacy against the interests of the administration of justice," the Tribunal said.

It said that the two processors challenged the right of the Competition Commission to use evidence against them, allegedly obtained from an unauthorised summons and subsequent interrogation of their respective executives.

"They also alleged that the referral against them was unlawful and asked for it to be set aside."

The Tribunal said that a further challenge was that Count 5 had not been validly referred by the Commission against Woodland, because it had not been preceded by an administrative procedure called a complaint initiation.

"They also sought an order that the evidence elicited from the summons whether oral or documentary could not be used by the respondents in 'any hearing before the Tribunal'."

In the course of the hearing, several technical arguments were also addressed as to the validity of the Commission's conduct.

The Tribunal ruled that the two summonses were void for vagueness in that they failed to allege sufficient particularity concerning the alleged prohibited practices that gave rise to the search.

The Tribunal as a result did not consider it necessary to consider any of the other technical issues raised because of this conclusion.

The Tribunal found in favour of the Commission in respect of Count 5 and held that it had been validly initiated prior to referral.

It held further that the issue of whether the evidence elicited at the interrogations could be used should be held over for the panel that hears the case.

Late last year the Tribunal, and on appeal the Competition Appeal Court, had to determine a challenge raised by Clover and Ladismith as to whether the complaint had been initiated timeously.

The Tribunal decided it had, and the Competition Appeal Court (CAC) confirmed the decision on appeal.

The CAC refused leave to appeal and Clover and Ladismith have petitioned the Supreme Court of Appeal to grant them leave.

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