CLASS ACTIONS: WHAT, WHY AND HOW

Category: Administrative and Procurement Law,Commercial Law
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There have been many instances where companies have wronged a group of people. This could be a result of ill-manufactured products, contamination of food products or unsafe working conditions. While individuals may have a strong case against the company, court processes are expensive and most often, the individual does not have the capacity to seek justice.

In comes the class action. Class actions are brought forward by an individual who is acting on behalf of a group of individuals.

Unfortunately, South Africa does not have legislation dedicated to class actions. In this instance, we rely on case law and we have been seeing quite a few class actions cases recently. However, we have not been left to fend for ourselves. Our Constitution provides direction on how we may approach class actions.

Section 38 of the Constitution states that the individuals who may approach a court are "*anyone acting as a member of, or in the interest of, a group or class of persons*" or "*anyone acting in the public interest*". Individual groups and/or representative bodies will therefore be entitled to bring these actions. Of course, the court will have to approve the class representative.

The largest, and most iconic, class action that was certified in South Africa is the historical judgment of Nkala 7 Other Mineworks vs Harmony Gold Mining Company Ltd & Other mining companies. This case is more popularly known as the Silicosis case. The judgement was handed down in May 2016, which makes it a fairly recent landmark judgement.

This class action allowed between 17,000 and 500,000 mineworkers and former mineworkers who were suffering from silicosis and tuberculosis, as a result of unsafe working conditions, to sue the relevant mining companies for damages.

The judgment developed the common law to allow for the dependants of miners who have passed away to claim for damages. The court found it to be in the interest of justice to certify two classes, being the silicosis class and the tuberculosis class. The court held that the evidence of the miners was similar and that the evidence relevant to the miners would have to be repeated in each individual case in the event of separate cases. As a result, the court affirmed that it would be neither economic nor affordable for miners to bring mine actions in individual capacities. The class action trial therefore

dealt with all the evidence at once.

With the current scandals (and tragedies) surrounding companies like Ford and Tiger Brands, it is comforting to note that individual claimants are not left to fend for themselves. Class actions make justice accessible.