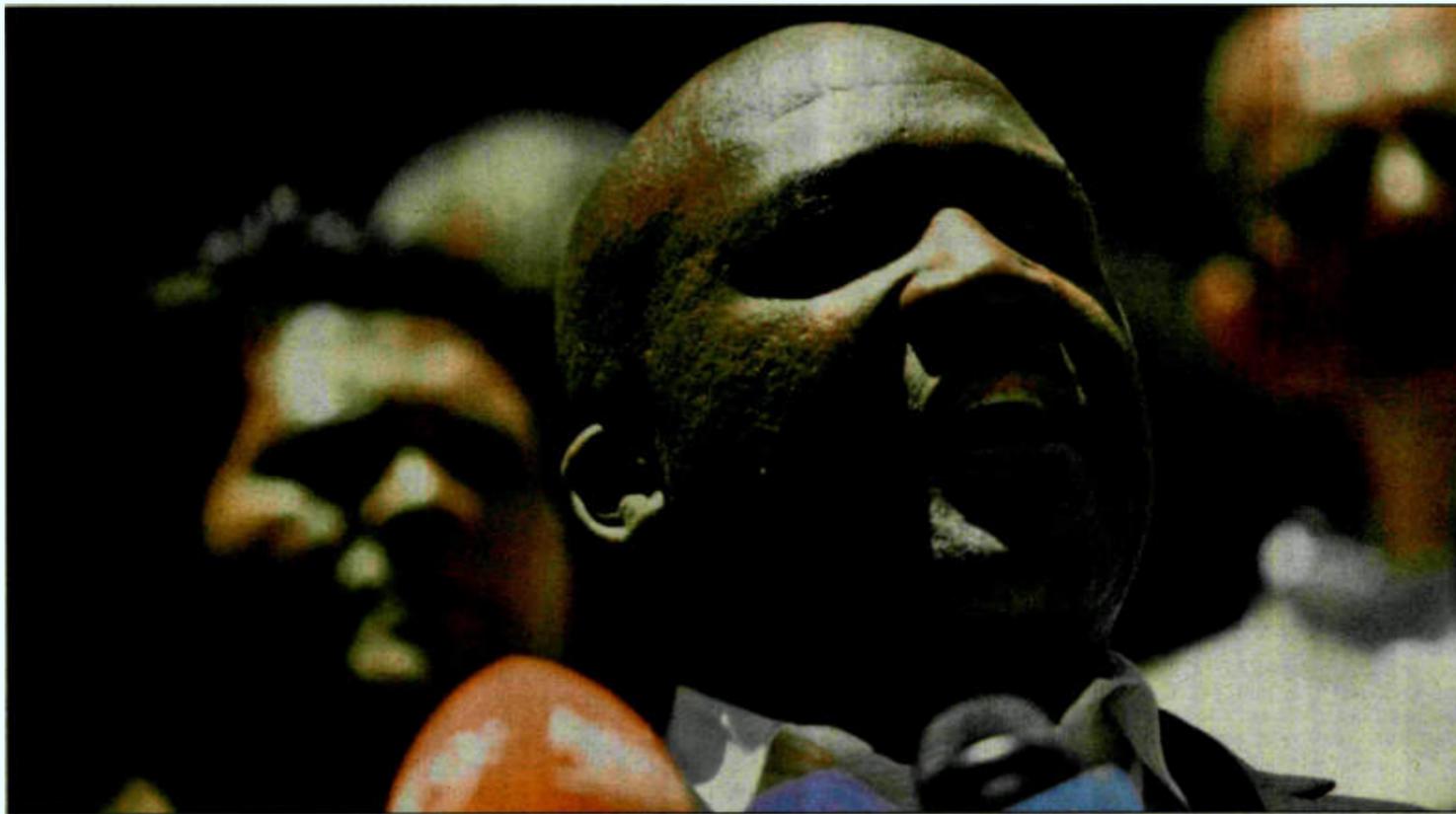


Give us our daily bread



FIGHTING FOR FOOD: Nkosikhulule Nyembezi, manager of the Black Sash's advocacy programme, says the battle to win certification for a class action lawsuit against Tiger Consumer Brands, Pioneer Foods, and Premier Foods over their fixing the bread price will continue
Picture: MOEKETSI MOTICOE

Court approached to enforce our rights, says **Nkosikhulule Nyembezi**

RECENTLY the Western Cape High Court heard our application for a certificate to launch a class action against Tiger Consumer Brands, Pioneer Foods, and Premier Foods on behalf of millions of bread consumers in the province. This is the beginning of a long struggle to seek redress as we envisage later actions may be taken on behalf of bread consumers nationally.

Acting Judge Francois van Zyl dismissed the certification application, and will later provide his written decision.

Despite the disappointing outcome, we have filed papers and are pressing ahead with our demands for compensation.

The case brought by the Children's Resources Centre, Black Sash, Cosatu (Western Cape), the National Consumer Forum and five individual bread consumers, is the second class action undertaken in South Africa on such a large scale, and the first of its kind that seeks damages for consumers.

That is why we were all nervous in the court room last week.

From the beginning, the acting judge demanded to know whether, as a bread consumer, he was included as part of the class on whose behalf we were seeking a certificate to speak, and whether he should

not opt out of the class before hearing the matter.

The nervousness in the room intensified when the attention turned to a paragraph in the papers pointing out that, as applicants, we "may be visited with costs" should the application fail.

Things seemed to calm when lawyers for the bread companies said that, except for Cosatu, they were not asking the court to make us pay the cost of the application.

Beyond that, I believe Van Zyl will be remembered as a careful and open-minded judge.

Now that he has dismissed our application for a certificate to represent the class of consumers in this case, the focus turns back to the question that dominated arguments in court: who are the members of "the class" we represent in this case?

As applicants we approached the court because the cartel activity of the bread companies violated our constitutional rights of access to food and nutrition, as guaranteed under section 27. Also, the constitution allows us to approach the court to complain that this right of access to food and nutrition has been infringed upon, and to ask the

court to grant us a certificate to represent in court all the bread consumers as a group or class of persons.

Secondly, a pile of decisions handed down by the Competition Tribunal against these companies over the last three years form the basis of our class action, as they provide the basic evidence needed on how and when the companies contravened the law.

Indeed, we know the increase in bread prices was not an unfortunate occurrence caused by unpredictable weather or the fluctuating price of fuel, but was because bread companies inflated and profited illegally from the sale of a staple food on which many families, especially our children, rely to survive.

Thirdly, the answer to the question about who are the members of the class rests largely in our understanding of the reasons why our government is struggling to meet the Millennium Development Goals to reduce poverty.

We must understand that it is the health and wellbeing of low earners and people who use state social grants largely to buy food for their family, children who benefit

from school nutrition programmes, small-scale bread distributors and other consumers who continue to be harmed by the cartels.

As far back as 2008, after organisations such as the Black Sash pressed government to increase the amount of the social grants, then-Finance Minister Trevor Manuel announced in parliament that "government is raising the value of the old age grant, child support grant, disability grant and care dependency grant by R20 each so that grant beneficiaries can see the buying power of their grants protected. Extra resources have also gone to school feeding programmes and for agricultural starter packs to deal with the short and longer term implications of higher food prices".

So we will be in court together as a class of ordinary consumers, armed with determination and vigilance, and faced with a reality that if we don't stand together as a class to demand our rights to buy bread at a competitive price and from competing bakeries and distributors, we will surely be "visited with enormous costs" from greedy bread companies wanting to squeeze profit out of our pockets.

● *Nyembezi is a policy analyst and advocacy programme manager for the Black Sash*

'We must stand together as a class to demand our rights'

