HEKPOORT ENVIRONMENTAL PRESERVATION SOCIETY AND WILLEM LOUW v THE MINISTER OF LAND AFFAIRS, THE MINISTER OF DEVELOPMENT PLANNING, ENVIRONMENT AND WORKS FOR THE PROVINCIAL GOVERNMENT OF GAUTENG, THE MINISTER OF WATER AFFAIRS AND FORESTRY AND HEKPOORT FOODS CC

CCT 21/97

Explanatory note

The following explanation is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

Hekpoort Environmental Preservation Society (the Society) has been refused direct access to the Constitutional Court. The Society was attempting to prevent Hekpoort Foods CC (Hekpoort Foods), which manufactures sorghum beer on a property at the foot of the Magaliesberg, from carrying on its activities. It alleged that Hekpoort Foods was polluting the underground water supply, thus irreversibly damaging the environment. This was denied by Hekpoort foods.

Before this application for direct access to the Constitutional Court, the Society had applied to the High Court for relief. The society disregarded relevant rules of court and a costs order was granted against it. Ultimately the High Court held that the Society could only continue with its application if it gave security for legal costs incurred by the other parties in defending the case against them.

In its application to the Constitutional Court, the Society alleged that the order of the High Court was preventing it from having the case heard because it did not have enough money to secure the costs. This, it argued, effectively denied it access to the courts in order to protect the public interest in preserving the environment. (The Constitution guarantees the right of access to the courts.)

Writing for a unanimous Court, Ackermann J emphasized that the Constitutional Court only allows direct access in exceptional circumstances. In this case the stringent requirements of the Court rule allowing direct access had not been met.

Ackermann J stated that the High Court application is still pending before that court. The Constitutional Court cannot take the matter over and dispose of it as if it were the court hearing the matter for the first time. The facts relied upon by the Society to support its allegation that the environment is being polluted are in dispute. Ackermann J held that it is not the role of the Constitutional Court to resolve disputed facts by hearing oral evidence. This would only be appropriate in the most exceptional circumstances and this was not such a case. Further the Society's complaint - that the order for security for costs denied it access to the courts - should have been raised in the High Court when the application for security for costs was brought.

The Court pointed out that the Society had not consistently treated the matter as an urgent one. It also stated that even the most public spirited of litigants cannot simply ignore procedural rules which are designed to regulate fair and orderly court business.