



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA**  
**MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF**  
**APPEAL**

**From:** The Registrar, Supreme Court of Appeal

**Date:** 6 February 2023

**Status:** Immediate

*The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal*

*DRDGOLD Limited and Another v Nkala and Others (688/2016) [2023] ZASCA 9 (6 February 2023)*

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Today, the Supreme Court of Appeal (SCA) handed down judgment striking from the roll an appeal against a decision of the Gauteng Division of the High Court, Johannesburg (the high court).

The issue before the SCA was whether the high court's certification and declaratory orders were appealable.

In a consolidated application, the respondents, acting as proposed class representatives, approached the high court for the certification of a class action. It was common cause that over several decades many thousands of underground mineworkers in South African gold mines contracted silicosis and/or pulmonary tuberculosis (tuberculosis). The only cause of silicosis is the inhalation of harmful quantities of silica dust. Silicosis is a painful, incurable and progressive disease. It caused the death of many of these mineworkers. Tuberculosis, on the other hand, is a treatable bacterial lung disease. The respondents contended, however, that exposure to excessive silica dust levels increases the risk of contracting tuberculosis. In the court a quo the respondents presented prima facie evidence of prolonged industry-wide underground exposure of mineworkers (invariably male persons) to unhealthy levels of silica dust. They proceeded to allege that the mining companies, acting in concert or at least in similar fashion, negligently and wrongfully failed to properly address this health hazard. Therefore, so the respondents said, every mineworker that had worked underground in a gold mine and thus contracted silicosis and/or tuberculosis – or his dependants – had a delictual claim for damages against the mining company or companies for which he worked underground, as well as against the applicable 'parent companies'. The respondents contended that the commonality between the claims of these claimants amply justified the certification of a class action.

On the strength of these contentions the respondents sought the certification of a class action against the mining companies in respect of two classes that would be determined in two stages. The two classes were described as a silicosis class and a tuberculosis class. The

respondents also sought a declaratory order in respect of the transmissibility of class action claims for general damages.

The SCA held that neither the certification nor the declarator was a decision under s 16(1) of the Superior Courts Act. Even though leave to appeal against both was granted, the SCA lacked jurisdiction to entertain an appeal against the certification or the declarator. The matter was therefore struck from the roll with costs.

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