



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 31 March 2010

Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

MANKAYI v ANGLOGOLD ASHANTI

The Supreme Court of Appeal today dismissed an appeal by a mineworker against the judgment of the Johannesburg High Court upholding an exception against his particulars of claim. The appellant who was employed as a mineworker sought payment from the Anglo Gold Ashanti, a public company engaged in mining operations, of damages amounting to some R2,6 million with interest and costs based on the latter's alleged breach of a duty of care owed to him. The appellant alleged in his particulars of claim that he was employed by the respondent as a mineworker underground during the period January 1979 to September 1995 and was as such exposed to harmful dusts and gases, including silica dust, at his workplace and in the work environment. As a consequence of this exposure, he alleged that he

contracted an occupational disease or diseases in the form of silicosis, pulmonary tuberculosis and obstructive airways disease, commonly known as miners' phthisis, resulting in his suffering adverse physical and mental consequences, having a reduced life expectancy and being unable to work whether as a mine worker or otherwise. His claim was framed in delict and included amounts claimed on account of his past and future loss of earnings, future medical expenses as well as general damages. The basis of his claim was that the mine owed him a duty of care arising under both the common law and statute to provide a safe and healthy environment in which to work. He averred that the mine, in breach of this duty, and when it was aware or ought reasonably to have been aware that he would be exposed to harm, failed to apply appropriate and effective control measures. Each of the mines he worked in was a 'controlled mine' as contemplated in Chapter 11 of the Occupational Diseases in Mines and Works Act 78 of 1973 ('ODIMWA') and the respondent was and is deemed to be the 'owner' of those mines. The work he performed was 'risk work' as defined in s 13 of ODIMWA and the diseases he contracted 'compensatable diseases' as defined in ODIMWA. He was certified in terms of s 48(1) as suffering from a compensatable disease and received compensation from the Compensation Commissioner in terms of s 94 of ODIMWA in the amount of R16 320. He contended that he was precluded by s 100(2) of ODIMWA from receiving any benefits in terms of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 ('COIDA') and that by reason of his exclusion from the benefits payable in terms of COIDA, he was not an 'employee' as contemplated in s 35 of COIDA and accordingly not precluded by that section from bringing the action against

the respondent. The SCA, however, held that he was an 'employee' as defined in COIDA and that his common-law claim against the mine for damages based on the latter's alleged negligence was excluded by s 35 (1) of COIDA.