



**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
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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.

MAHAEEANE & ANOTHER v ANGLOGOLD ASHANTI LIMITED

The Supreme Court of Appeal today handed down judgment in an appeal resulting from an application brought in the Gauteng Local Division of the High Court, Johannesburg. In the application, the appellants sought to obtain records in the possession of the respondent including those relating to: steps taken by the respondent to create a safe working environment in its mines; its compliance with its statutory health and safety duties; steps taken to monitor the health of the appellants; any reports on these matters relevant to silicosis and similar records. It was contended that the records were required to enable the appellants to assess their prospects of successfully suing the respondent for damages caused by their having contracted silicosis.

The appellants had both been employed in gold mines run by the respondent for many years. Silicosis is common in gold mine workers who are exposed to harmful quantities of silica dust whilst working underground in mines. This dust is generated in the course of mining activities. The appellants were dismissed from employment on the basis that they had contracted silicosis. This much was common cause. It was disputed that their silicosis had resulted from their employment in the respondent's mines.

The first appellant was certified as having contracted silicosis during September 2004 and the second appellant during September 2009. By November 2011, both the appellants had instructed Richard Spoor Incorporated, a firm of attorneys, to represent and advise them. During December 2012, this firm of attorneys launched an application to certify a class action. The class sought to be certified included persons such as the appellants who had worked on the respondent's gold mines and had contracted silicosis. There were 56 applicants in the certification application but the

appellants were not cited as applicants. A detailed set of draft particulars of claim was annexed to the certification application. The request for records under the PAIA was submitted on behalf of the appellants by their attorney in August 2013. The respondent contended that this amounted to an application for pre-litigation discovery and a fishing expedition.

The high court refused the application for records, holding that there was alternative legislation available to the appellants to obtain the records. In addition, it found that the records were not reasonably required for the exercise or protection of any rights. The high court granted the appellants leave to appeal against this refusal.

The Supreme Court of Appeal was divided three to two. Two minority judgments would have upheld the appeal and granted access to the records. The majority upheld the order of the high court dismissing the application. It did so on the basis that the right relied upon was that to claim damages in a court of law. Since the appellants were able to formulate their claim adequately without the records in question, as demonstrated by the detail in the draft particulars of claim annexed to the certification application, it could not be said that the records were reasonably required to exercise or protect that right. In addition, since the class action had subsequently been certified, this signalled the commencement of proceedings and the appellants were included in that action until they opted out. That being the case, there was a further reason why the records were not reasonably required to exercise or protect the right to claim damages, because the machinery of discovery was available to them. The appeal was accordingly dismissed.