

Multi-billion rand legal threat to SA miners crumbles

Allan Seccombe, Posted: Thu, 26 Jun 2008

The test case brought against AngloGold Ashanti in the case of a sick worker and said by human rights lawyers to have the potential to open the South African mining industry to lawsuits worth billions of rands has gone in AngloGold's favour.

The Johannesburg High Court ruled today that the exception lodged by AngloGold Ashanti in respect of Mr Thembekile Mankayis claim for damages against the company has been upheld, AngloGold said in a statement.

Charles Abrahams, a lawyer representing Mankayi, said the legal team working on the case, including controversial human rights activist Richard Spoor, would study the judgement and could lodge appeal against it in the Supreme Court within the next 14 working days. "My initial reading of the judgement leads me to think this is not the only and correct interpretation of this matter," Abrahams told Miningmx.

"We are a bit disappointed by the judgement but that does not mean it's the end of the matter. We will seriously consider the option of an appeal, but we need to all sit down and study the judgement... the issues we are dealing with are absolutely critical," he said.

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AngloGold Ashanti was served a R2.7m summons in October 2006 on behalf of Mankayi, who worked at AngloGold's Vaal Reef mines in the 1990s, and, the lawyers said, contracted silicosis, a lung disease contracted by breathing in silica quartz dust.

Spoor had said he saw the proceedings against AngloGold Ashanti as a test case that could open the floodgates for workers made sick working on South African mines to potentially claim billions of rands from mining companies.

Under South African labour laws, companies are protected by the Compensation for Occupational Injuries and Diseases Act (COIDA) from lawsuits by employees disabled at work and legal actions brought by families of employees killed at work. A government-run fund provides compensation to disabled workers or families of those killed at work. AngloGold Ashanti used the COIDA provisions to defend itself. The defendant is an employer as defined in COIDA, the company's legal counsel said in court papers.

Mankayis legal team based their arguments on there being no provision within the Occupational Diseases in Mines and Works Act (ODIMWA) that specifically bars workers from suing their employers.

AngloGold said the court had decided in its favour. The finding confirms that employees who qualify for benefits in respect of the Occupational Diseases in Mines and Works Act (ODMWA) may not, in addition, lodge civil claims against their employers in respect of their relevant conditions, it said in Thursday's statement. AngloGold Ashanti considers the finding to be fully in line with compensation law, it said.

We believe that the social contract implied by the Occupational Diseases in Mines and Works Act (ODMWA) and similar statutory compensations systems where employees afflicted by occupational injuries and illnesses receive a pre-determined compensation without having to suffer the expense and inconvenience of prosecuting legal actions, and in return waive the right to civil claims is a just one, offering as it does easier access for employees and greater certainty for employers. miningmx.com