

**The significance the Constitutional Court's decision in *MANKAYI V ANGLOGOLD ASHANTI LTD* for former gold mineworkers who suffer from silicosis**

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In 2006, Richard Spoor instituted a civil claim on behalf of Mr Mankayi in the South Gauteng High Court against AngloGold Ashanti Limited (AngloGold) for damages Mr Mankayi suffered consequent to the occupational lung diseases that he contracted as a result of working on the gold mines. The claim was based on the argument that AngloGold negligently exposed Mr Mankayi to harmful levels of dust and gases while he was working on the mines, resulting in him developing occupational lung diseases, which meant he was no longer fit to work underground.

The claim was based on both a common law and statutory duty borne by AngloGold to provide a safe and healthy working environment, and, in breach of this duty, AngloGold failed to apply appropriate and effective control measures in its mine to reduce the risk of exposure to harmful dust and gases.

Prior to launching the action, Mr Mankayi was certified to be suffering from a compensatable disease in terms of the Occupational Diseases in Mines and Works Act, 78 of 1973 (ODIMWA) and he was accordingly paid R16 320 in compensation in terms of that Act. However, in light of the paltry amount of compensation that he received in terms of ODIMWA, Mr Mankayi sought to claim damages to the value of R2.6 million from AngloGold as compensation for the debilitating lung diseases that he contracted. Mr Mankayi did so on the basis that, despite being entitled to and obtaining compensation in terms of ODIMWA's compensatory system, there was no provision in ODIMWA precluding him from suing AngloGold for damages at common law. Further, due to the fact that section 100(2) of ODIMWA expressly prohibited him from claiming compensation in terms of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA), Mr Mankayi contended that section 35(1) of COIDA (which precludes claimants in terms of COIDA from instituting damages claims against their employers for negligence at common law) did not apply to him.

AngloGold argued that Mr Mankayi had no claim because he fell within the provisions of COIDA which specifically excludes employees from instituting civil claims for damages against their employers (see section 35(1) of COIDA).

Both the High Court and the Supreme Court of Appeal agreed with AngloGold's argument that, despite being a claimant under ODIMWA, and despite being precluded from claiming compensation under COIDA, Mr Mankayi had no right to sue AngloGold for damages suffered as a result of the occupational lung diseases he contracted whilst working for AngloGold.

In March 2011, the Constitutional Court upheld Mr Mankayi's appeal and overturned the decision of the SCA. The Constitutional Court found that mineworkers who suffer from compensatable occupational lung diseases in terms of ODIMWA are entitled to institute civil claims against their former employers for additional compensation.

The court found that COIDA and ODIMWA made provision for very different schemes of compensation. It found that the COIDA compensation scheme makes provision for much higher and far more comprehensive compensation than that which is provided for in OIMWA. For example, a worker who suffers from an occupational lung disease and who qualifies for compensation under COIDA is entitled to a greater amount in compensation than that which is provided to a mineworker who suffers from the same lung disease, but who, by virtue of the fact that he worked on the mines, falls within the ODIMWA scheme.

The court noted that, whilst both COIDA and ODIMWA require employer contributions to be made on behalf of employees, the contributions made in terms of ODIMWA allow the mining companies to make significant savings on their contributions.

The Court found that, in light of the historical role of mining in South Africa and the dangers and risks faced by mineworkers, there is nothing irrational about preserving their common law claim against employers for compensatable diseases in terms of ODIMWA.

As a result of the Constitutional Court's decision in *Mankayi*, all former mineworkers who suffer compensatable diseases in terms of ODIMWA have the right to institute civil damages claims against their former employers. The decision has given rise to the possibility of instituting a class action on behalf of all former gold mineworkers who suffer from silicosis. Richard Spoor has undertaken the litigation and hopes to launch his case in the next few months.