



CONSTITUTIONAL COURT OF SOUTH AFRICA

Thembekile Mankayi v AngloGold Ashanti Ltd

CCT 40/10

Date of Hearing: 17 August 2010

MEDIA SUMMARY

The following media summary is provided to assist in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On Tuesday 17 August 2010, the Constitutional Court will hear argument in a case in which Mr Mankayi, the applicant, wants to claim damages at common law from a mining company that had employed him as a miner from 1979 to 1995. He worked underground and was exposed to harmful dusts and gases which, according to him, caused serious lung and airtract diseases. He cannot now work. Mr Mankayi's work was classified as "risk work", his illnesses were "compensatable" diseases, and he was awarded compensation in the sum of R 16320.00 in terms of a mining law (Occupational Diseases in Mines and Works Act 78 of 1973).

When he sued for damages in the High Court under common law, the mining company took the point that he was prohibited from suing an employer for common law damages arising from disease resulting in the employee's death or disablement in terms of section 35(1) of a compensation law (Compensation for Occupation Injuries and Diseases Act 130 of 1993).

The High Court held that the compensation law prevented Mr Mankayi from claiming damages. The Supreme Court of Appeal confirmed this decision.

The applicant seeks leave to appeal to this Court. He contends that the mining law and the compensation law are not part of one compensation system as found by the Supreme Court of Appeal and argues that his interpretation better promotes the spirit, purport and objects of the Bill of Rights as required by section 39(2) of the Constitution. He says that he did not receive compensation in terms of the compensation law but in terms of the mining law and that he should therefore be able to sue at common law.

The mining company argues that “employee” in the compensation law is broad and includes one who has a claim under the mining law. It contends further that the compensation law precludes an employee even when that claim arises from a “compensatable” disease that gives rise to a claim under the mining law. The mining company supports the judgment of the Supreme Court of Appeal as being consistent with the Constitution.