

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: 44060/18

In the *ex parte* application of:

BONGANI NKALA & 67 OTHERS

Applicants

IN RE: Application to approve a settlement agreement

SUMMARY OF COURT JUDGMENT

The following summary is provided to assist the members of the Settlement Classes and interested parties who seek a summary of the court's judgment. It is not binding on this court or any member of the court.

1. On 13 May 2016 this court certified a class action against companies operating in the gold mining industry, with two separate and distinct classes; a silicosis class and a tuberculosis class ("the Nkala certification application" or "Nkala"). The court also ordered that any settlement agreement reached by the class representatives on behalf of a class must be approved by the court to be valid. A settlement agreement was subsequently concluded between the class representatives and the Settling Companies and signed on 3 May 2018. Clause 2.1.1 of the settlement agreement provides for the suspension of the operation of the settlement agreement until it is sanctioned by a court of law.

2. The settlement agreement, in a nutshell, provides for the payment of benefits to mineworkers and the dependants of deceased mineworkers, who contracted silicosis or pulmonary tuberculosis as a result of their employment by the Settling Companies, through the Tshiamiso Trust ("the Trust"). The Trust will be funded by six of the Settling Companies namely African Rainbow Minerals Limited, Anglo American South Africa

Limited, AngloGold Ashanti Limited, Gold Fields Limited, Harmony Gold Mining Company Limited and Sibanye Gold Limited, who are also the founders of the Trust ("the Founders"). Their liability to fund the Trust is unlimited. The Trust is, in terms of the trust deed, obliged to identify and locate eligible mineworkers and dependants. Claims may be submitted to and received by the Trust for a period of 12 years from the date the Trust becomes effective. The effective date of the Trust is the date on which the suspensive conditions in the settlement agreement are fulfilled. The suspensive conditions, set out in clause 2.1 of the settlement agreement, are the following:

- 2.1. The court's approval of the settlement agreement and confirmation of the court's termination of the class action litigation as against the Settling Companies.
- 2.2. Confirmation that the number of claimants that have elected to opt out of the settlement agreement within the prescribed period do not exceed 2000 (two thousand). This condition may be waived by the Settling Companies.
- 2.3. The lodgement of the trust deed with the Master and the issuing of letters of authority by the Master to the first trustees of the Trust.
3. The Trust must process and assess the claims and pay eligible mineworkers and dependants in the amounts stipulated in the trust deed. The aim of the settlement agreement is to provide compensation to those beneficiaries, in addition to and, in most instances, in excess of — the compensation available under the Occupational Diseases in Mines and Works Act 78 of 1973 ("ODIMWA").
4. In *Nkala* this court held that any court considering a class settlement must assess whether it is "fair, reasonable, adequate and that it protects the interests of the class" before approving it. ° This is because the settlement agreement, if approved, will be binding on absent class members unless they subsequently opt out, and is proposing to compromise the rights of absent class members.
5. The Settlement Classes are set out in the Opt Out Notice. The eligibility of members of the Settlement Classes to receive compensation under the settlement is qualified by the terms of the settlement agreement and the trust deed. The key eligibility

requirement is the undertaking of "risk work" at a "qualifying mine" during a "qualifying period". Qualifying mines are the mines in respect of which each of the Settling Companies is responsible for the purposes of the settlement agreement. The qualifying periods are the periods during which the Settling Companies are responsible for those mines for the purposes of the settlement agreement. The qualifying mines and the qualifying periods are set out in Schedule F to the trust deed.

6. The Settlement Classes also includes mineworkers who were exposed to silica dust on or before the effective date, but who only developed a qualifying disease after that date, to the extent that such symptoms manifest during the 12- year period of operation of the Trust.
7. Benefits will be payable to eligible claimants with silicosis or tuberculosis or, where those persons have passed away, to their dependants or estates. The benefits paid under the settlement and trust deed are in addition to those payable under ODIMWA. Eligible claimants will be paid a specific amount depending on the nature and severity of the concerned mineworker's illness.
8. Claimants who are alive as at the effective date but who die before submitting a claim, or who die after submitting a claim but before their claim is paid, will be treated as living claimants and the full value of their claim will be paid to their estates.
9. All the parties made an effort to ensure that the settlement agreement is reasonable, adequate and fair. The terms of the settlement agreement demonstrate that they succeeded in their efforts. The negotiations yielded the best possible settlement terms that the parties and stakeholders could find in the circumstances. We wish to express our indebtedness to all the legal teams which represented various parties in this matter for the commendable manner in which they discharged their duties to their clients and to this court.
10. The settlement agreement is approved and made an order of court.

THE COURT