



CONSTITUTIONAL COURT OF SOUTH AFRICA

Thembekile Mankayi v AngloGold Ashanti Limited

Case No: CCT 40/10

Date of Judgment: 3 March 2011

MEDIA SUMMARY

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

On 3 March 2011 the Constitutional Court delivered a judgment on whether section 35(1) of the Compensation for Occupational Injuries and Diseases Act (COIDA) extinguishes the common law right of mineworkers to recover damages against mine owners even though they are covered by the Occupational Diseases in Mines and Works Act (ODIMWA), and as such are not entitled to claim under COIDA.

Section 35(1) provides that “[n]o action shall lie by an employee or any dependant of an employee for the recovery of damages in respect of any occupational injury or disease resulting in the disablement or death of such employee against such employee’s employer, and no liability for compensation on the part of such employer shall arise save under the provisions of this Act in respect of such disablement or death.”

The applicant, Mr Mankayi, was employed by the respondent mining company AngloGold as an underground mineworker. Mr Mankayi averred that during his employment he contracted occupational diseases in the form of tuberculosis and chronic obstructive airways which rendered him unable to work as a mineworker or in any other occupation. He instituted an action for delictual damages against AngloGold on the basis that the mine owed him a duty of care arising under both common law and statute to provide a safe and healthy working environment.

AngloGold objected to Mr Mankayi’s particulars of claim as raising no cause of action because section 35(1) of COIDA precludes common law claims by employees against their employers. Mr Mankayi contended that he is not barred by section 35(1) of COIDA

because, although he is an “employee” in terms of section 1 of COIDA, his diseases are covered by ODIMWA and so section 35(1) of COIDA does not apply to him.

Khampepe J, with whom Ngcobo CJ, Moseneke DCJ, Brand AJ, Cameron J, Froneman J, Mogoeng J, Nkabinde J, Skweyiya J, and Yacoob J agreed, concluded that despite the wide ambit of the word “employee” in COIDA, section 35(1) of COIDA plainly does not cover employees who are not entitled to claim under COIDA. She further held that the exclusion of liability in section 35(1) of COIDA is limited to “employees” who are entitled to compensation in respect of “occupational diseases” under COIDA. Khampepe J also concluded that COIDA and ODIMWA do not constitute one single system of compensation as was held in the Supreme Court of Appeal (SCA).

Finally, the Court decided that the order of the SCA be set aside and replaced with an order dismissing AngloGold’s interpretation of section 35(1) of COIDA. The Court ordered AngloGold to pay costs in the High Court, in the SCA and in this Court.

In a separate concurring judgment, Froneman J differed from Khampepe J’s reasons for granting leave to appeal. He suggested that general consideration be given to whether the time has arrived to debate what kind of constitutional matters this Court should hear, rather than focusing on whether particular issues of law are constitutional matters in the jurisdictional sense.