

Kabwe lead poisoning Claimants remain committed to securing justice as they seek leave to appeal in case against Anglo American South Africa

- Claimants have filed an application for leave to appeal a December judgment that dismissed the certification of a class action on behalf of an estimated 140,000 Claimants, effectively blocking their access to justice.

10 January, 2024, Kabwe, Zambia

Today, lawyers acting on behalf of children and women who allege lead poisoning caused by a former Anglo American lead mine in Kabwe, Zambia have filed for leave to appeal an earlier Johannesburg High Court's judgment that ruled their claim could not proceed as a class action.

The case is being brought by 12 Claimants on behalf of an estimated 140,000 Zambian women and children who have suffered lead poisoning, which caused and continues to cause permanent brain damage in the surrounding communities.

The Kabwe lead mine (the Mine) was within the Anglo American Group from 1925 until 1974, during which time it was one of the most productive mines in the region. The Kabwe Claimants allege that Anglo American South Africa (AASA) is liable because it played a key role in controlling, managing, supervising and advising on technical, medical and safety aspects of the operations of the Mine, deficiencies in which resulted in heavy and ongoing contamination of the local environment with lead. Lead has a half-life of 700 years in soil, as a result the local community have been poisoned over a period of decades spanning several generations.

The class action case has been filed in South Africa as it would not have been possible for the Claimants to obtain access to justice in Zambia. Amnesty International and a number of United Nations agencies intervened at the certification hearing in 2023 to argue that Anglo American's opposition to the class action was contrary to its own human rights policy and publicly stated human rights commitments.

The Claimants are represented by law firm Mbuyisa Moleele Attorneys with Leigh Day acting as consultants. In a joint statement, Leigh Day partner, Richard Meeran and Mbuyisa Moleele founding partner, Zanele Mbuyisa said:

'We consider the judgment to be fundamentally flawed and have now filed an application for leave to appeal.

Temporary legal setbacks are a common feature of human rights litigation against multinationals, where the stakes for both sides are invariably high. Most of our successful cases in this area have been fought tooth and nail and have often involved multiple appeals.

We and the communities of Kabwe remain undeterred in our quest to secure justice against Anglo American for the 140,000 women and children affected by lead poisoning in Kabwe.

We are very grateful for the support shown by everyone who has worked on this case in our continued pursuit of the best possible outcome for those affected by lead poisoning in Kabwe.'

ENDS

BACKGROUND:

- In a 126-page judgment delivered in late December, 2023, Justice Windell of the Johannesburg High Court ruled that a claim against Anglo American South Africa (AASA) over widespread lead poisoning across Kabwe, Zambia could not proceed as a class action.
- The claim is against AASA, the Johannesburg-based former head office parent company of the Anglo American Group.
- It is alleged that AASA knew, prior to 1974, of widespread environmental lead contamination and lead poisoning, including deaths of local children, and that it failed to heed expert advice to remediate the area before handing over the mine in 1974 to a Zambian state-owned company, ZCCM which operated the Mine until 1994.
- Based on their expert evidence the Claimants allege that the longevity of lead in the environment was understood by the 1950s and that therefore the risk to future generations should have been foreseen thereafter.
- Anglo American argues that ZCCM and Anglo's predecessors at the Mine (from 1916-1925) bear responsibility for the contamination and lead poisoning, and that Anglo has no responsibility. The Claimants disagree, pointing out that Anglo's involvement at the Mine coincided with the highest levels of lead production and Anglo was made aware of the risk to of lead poisoning to the local community as early as 1969. This is substantiated in the evidence of, Dr Clark, Dr Lawrence, and Dr Nicklin, which shows that children around the Mine were already suffering severe lead poisoning and that the soil in local areas was heavily polluted with lead from the Mine.
- Anglo American has also stated that it does not bear responsibility for the situation in Kabwe because it was not the owner/operator of the Mine, rather, it was only a minor investor. However, the Claimants contend that this argument is not legally relevant. Zambian law adopts English common law and English law imposes a duty of care where there was actual involvement by the parent company in key functions of the subsidiary relevant to the harm. The degree of shareholding, ownership and/or operation of the Mine is not the issue, legally.
- Anglo American claims that it operated the Mine according to the best standards at the time. But in the early 1970s, three of the Mine's own doctors reported the deaths of several local children from lead poisoning and widespread massive poisoning of local children with lead from the Mine. Recommendations in 1971 by international experts to reduce the environmental hazard were not implemented.
- At the certification hearing in January 2023, various UN agencies and human rights groups intervened as Amici Curiae, arguing that the class action should be allowed to proceed to ensure that the Kabwe victims were given access to justice.

The interveners included:

- Amnesty International;
- UN Special Rapporteurs on toxics and human rights, extreme poverty and human rights; i.e. rights of persons with disabilities; and
- The UN Working Groups on business and human rights and discrimination against women and girls.

- As a helpful reference, in Flint, Michigan, between April 2014 and October 2015, approximately 99,000 residents were exposed to lead when the drinking water source was switched from the Detroit Water Authority to the Flint Water System. After five years of litigation, the judicially approved settlement was worth \$626 million (£467 million) settlement for victims in Flint.
- The number of victims and average blood levels found in Kabwe residents far exceed even the highest recorded for claimants in the Flint case. Some children in Kabwe have even been recorded as having BLLs as high as 100 ug/dl, which are potentially fatal levels, while levels recorded in Flint's children have ranged from 2.33 µg/dL in 2006 to 1.15 µg/dL in 2016.