

Zambian lead poisoning Claimants win permission to appeal class action against Anglo American

- On Friday The Johannesburg High court has granted permission to appeal an earlier ruling denying class action certification for 140,000 women and children in Kabwe, Zambia.

22 APRIL 2024, Johannesburg, South Africa

On Friday 19 April, in a crucial step towards achieving justice for the children and women who allege lead poisoning caused by a former Anglo American lead mining operation in Kabwe, Zambia, the Johannesburg High Court granted permission to appeal an earlier judgment that dismissed certification of the class action.

In granting permission Justice Leonie Wendell found that an appeal against her earlier judgment had 'reasonable prospects of success on at least one ground of appeal' and that there were 'compelling reasons to grant the appeal, as class action law is still being developed in South Africa', and that 'there are current matters of law of public importance which directly implicate constitutional rights'. The Kabwe Claimants will now take their case against Anglo American South Africa ("AASA") before the Supreme Court of Appeal of South Africa later this year.

This is a major step forward in the longstanding lead poisoning class action claim against AASA, a wholly-owned subsidiary of London headquartered Anglo American Plc. The December judgment effectively blocked access to justice for the people of Kabwe.

Kabwe was an Anglo American mine from 1925 to 1974. The evidence submitted to the court by the Claimants in support of this claim is clear. From the early 1970s, reports by the Mine doctors showed that several children had died of lead poisoning from the mine, and a high proportion of children in the local communities were suffering from massive blood lead levels.

Experts for the Claimants also contend that the stability of lead in the environment was well known by the 1960s, and that the risk of lead poisoning to future generations should have been foreseen by Anglo American if the environment was bit cleaned up. The Claimants allege that on economic grounds, Anglo American failed to heed advice from international experts in 1970 that the topsoil should be replaced.

However, Anglo American argues that it adhered to standards that were acceptable in the 1970s, that the risk to future generations were not foreseeable, and that the company is therefore not liable to current inhabitants of Kabwe.

The class action was 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 to argue that Anglo American's opposition to the class action was contrary to the UN Guiding Principles on Business and Human Rights, Anglo American's own human rights policy and publicly stated human rights commitments.

The Kabwe 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:

"Anglo American's arguments refuting its responsibility indicate a shocking indifference to the tremendous and ongoing harm caused to generations of the Kabwe communities by its operations. This is a concerning stance from a company that claims to be "re-imagining mining to improve people's lives" through its Future Start Mining initiative. It is

also in stark contrast to the human rights principles to which Anglo American claims to subscribe, as set out in their Group Policies.”

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, or relocate the operations, 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.
- The class action was listed as a contingent liability in Anglo American’s 2022 financial results and was recently included again in their 2023 results.

- 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.