



AMBIT OF INSPECTOR POWERS UNDER SECTION 54 OF THE MINE HEALTH AND SAFETY ACT 29 OF 1996 CLARIFIED

By Shirley Fodor, Director and Chris Stevens, Director

LEGAL BRIEF DECEMBER 2016

At its core the Mine Health and Safety Act No 29 of 1996 ("MHSA") aims to promote a culture of health and safety and protect the health and safety of all persons employed by or at a mining operation.

INTRODUCTION

As commendable as these aspirations are, it has been a bone of contention between the mining industry and the Inspector of Mines as to when it may be justifiable for an inspector to issue a notice in terms of section 54 of the MHSA shutting down an entire mining operation. A decision that falls squarely within the bounds of an administrative action for purposes of the Promotion of Administrative Justice Act 2000.

Some clarity in this regard has been afforded by the recent judgment (4 November 2016) given in the labour court matter of AngloGold Ashanti Limited v Xolile Mbonambi and 6 Others case number J2459/16. The labour court enjoys concurrent jurisdiction with the High Court.

The material facts of the matter are that an inspection occurred on 17 October 2016 of a small area of AngloGold Ashanti's Kopanang Mine in Orkney resulting in six instructions being issued in terms of section 54(1) of the MHSA, the effect of which was to shut down the entire mine site with effect from 17 October 2016 at a loss to AngloGold Ashanti of some R9.5 million per day. The representations

made by AngloGold Ashanti fell on deaf ears and on 18 October 2016, three additional instructions were issued. An appeal was lodged on 19 October 2016 with an urgent application being launched on 21 October 2016.

The provisions of section 54(1) require the inspector concerned to establish objectively that a state of affairs would lead a reasonable person to believe that it may endanger the health and safety of any person at the mine and contemplates an instruction that is limited by the extent to which it is necessary to protect the health and safety of persons at the mine.

The standard required of an employer in terms of section 2 of the MHSA is one of reasonable practicality. This standard is compliant with the general common law duty of all employers to provide a reasonably safe work environment. It is accordingly not an absolute standard but one that by its nature and scope requires an objective assessment of the work concerned and the hazards associated with it.

In making the administrative order that works cease at the mine (whether in whole or in part), the inspector must apply a sanction that is proportional to the offence. It was this aspect of proportionality which was lacking in the present case. An objective state of affairs did not exist that would lead a reasonable person to believe that the health and safety of any person at the mine was in jeopardy. The court

accordingly suspended the operation of the instructions issued by the inspector pending the outcome of AngloGold Ashanti's appeal.

CONCLUSION

The stance of the inspectorate that it is entitled to close mines on account of minor safety infractions in a single area, without specific reference to objective facts and circumstances that render the entire mining operation unsafe, is incorrect. Those charged with the enforcement of the MHSA must act within the limits of rationality.

Should you have any questions regarding this judgment or any other element of the MHSA, please do not hesitate to contact our offices.

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ABOUT THE AUTHORS



SHIRLEY
FODOR

Title: Director
Office: Johannesburg
Direct line: +27 (0)11 535 8316
Email: sfodor@werksmans.com

Shirley Fodor is a director in Werksmans' commercial and knowledge management practice areas. She specialises in commercial law, mining law and mining health and safety. She focuses on commercial law and assists with the management of knowledge in the firm. Her skills have been honed by combining practical experience with ongoing study.

In addition to a BCom LLB, Shirley has a Master's Degree (cum laude) in public international law from the Rand Afrikaans University.

Shirley's thesis has been incorporated into the Human Right's Commission research into land redistribution



CHRIS
STEVENS

Title: Director
Office: Johannesburg
Direct line: +27 (0)11 535 8467
Email: cstevens@werksmans.com

Chris Stevens is a partner with Werksmans Attorneys and is head of the Mining practice area. He was previously at Tabacks where he led the firm's mining and natural resources law department.

He advises on all aspects of mining law in South Africa, including in relation to commercial arrangements, conveyancing, litigation, opinion work, black economic empowerment laws and due diligence aspects. He advises many of the South African major mining houses on these aspects, as well as medium size mining companies and junior exploration companies. He further advises numerous American, UK, Canadian and Australian mining companies with interests in South Africa and acts for numerous black empowerment companies in relation to mining transactions. He has also been involved in numerous transactions for South African mining entities in sub-Saharan Africa. He has also been integrally involved in advising numerous mining companies on various aspects of the Mineral and Petroleum Resources Development Act, 28 of 2002, as well as the amendments to that legislation.

Chris co-lectured the LLB course at the University of the Witwatersrand on prospecting and mining law (1998–2007). He lectures at the same university to mining and engineering students on compliance aspects and annually lectures at the University of Pretoria for MSc geology students in a compliance course. He sat on the mining law committee of the International Bar Association (2002 – 2006).

Chris is named in the 2014 edition of Chambers Global: The World's Leading Lawyers for Business for his expertise in Energy & Natural Resources (Mining), listed as a Band 1 lawyer. He is recognised as a leading lawyer in The International Who's Who of Mining Lawyers 2014 and The International Who's Who of Business Lawyers 2014 and is named in Best Lawyers 2013 as the Johannesburg Mining Law «Lawyer of the Year».

Chris received BCom and LLB degrees from the University of Witwatersrand and has been practising mining law since 1987. He was admitted as a notary public in 1990.

Chris also speaks at numerous conferences, both in South Africa and internationally in relation to the South African mining industry.

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