



**Contact Officer:** Dean Knudson

**Reference:** CAS2313

Mr Jeyakumar Janakaraj  
CEO and Country Head  
Adani Mining Pty Ltd  
GPO Box 2569  
Brisbane Qld 4001

Dear Mr Janakaraj

***Environment Protection and Biodiversity Conservation Act 1999***  
**RE: Duty to provide accurate information**

I am writing to you regarding information that has been received by the Department of the Environment regarding a recent approval that was granted to Adani Mining Pty Ltd under the *Environment Protection and Biodiversity Conservation Act 1999*. I am writing to you as an employee of the Department performing a duty or carrying out a function under the EPBC Act.

The Department has received an allegation that while you were a senior executive officer of Konkola Copper Mines PCL, the company was found guilty by the Republic of Zambia Judiciary on four counts of environmental harm to Kafue River at Chingola in the Chingola District of the Copperbelt province of the Republic of Zambia. I have attached a copy of the court ruling of 25 November 2010, together with a statement of facts which further describes this allegation.

As you are aware, on 24 August 2015 the Department formally requested information as part of the approval process for EPBC 2010/5736 concerning the Carmichael Coal and Rail Infrastructure Project relating to the environmental history of executive officers (amongst other things), including:

*"... information about both the executive officer's history with the relevant entity and with other entities, whether or not those entities are related to the Adani Group."*

The Department is concerned that the omission of this component of your own environmental history raises questions about your compliance with section 489 and/or section 491 of the EPBC Act, as well as section 137.1 of the *Criminal Code Act 1995* relating to the provision of false or misleading information in relation to approval processes.

***Invitation to provide information***

I encourage you to respond to this allegation and provide any information or advice that you believe may assist us to understand the veracity of this allegation. You may choose not to supply information to the Department.

Please note that if you choose to respond to this letter, any information provided by Adani will be assessed by the Department to determine whether the requirements of the EPBC Act and the Criminal Code has been complied with.

If there is non-compliance with the the EPBC Act and the Criminal Code, any information supplied may be used as evidence in subsequent court proceedings. I encourage you to obtain independent legal advice in relation to any concerns you may have relating to alleged non-compliance with the EPBC Act and the Criminal Code.

***Submitting information***

As the Department has a responsibility to respond to alleged breaches of the EPBC Act in a timely manner, if you wish to provide a written response to the matters raised in this letter, please submit your response by close of business on 13 November 2015 by email:

or by post to:

Dean Knudson  
First Assistant Secretary  
Environment Standards Division  
Department of the Environment  
GPO Box 787  
Canberra ACT 2601

Please be aware that it is an offence to provide information pursuant to this request where that information is false or misleading.

Yours sincerely

Dean Knudson  
First Assistant Secretary  
Environment Standards Divison

6 November 2015

Encl.

IN THE SUBORDINATE COURT OF THE  
FIRST CLASS FOR THE CHINGOLA  
DISTRICT HOLDEN AT CHINGOLA  
(Criminal Jurisdiction)

1C/232/2010

BEFORE: SILOKA. S V ESQ,

BETWEEN: THE PEOPLE  
AND  
KONKOLA COPPER MINES PLC

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PROCEEDINGS HELD ON 25<sup>TH</sup> NOVEMBER 2010

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25/11/2010

Court: Siloka S.V Esq

Accused: Present

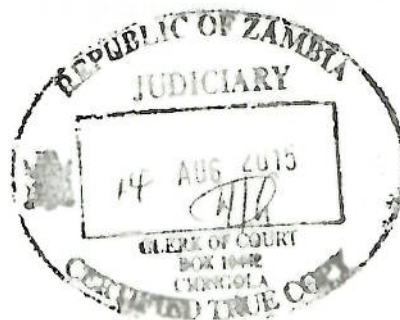
Public Prosecutor: Inspector Shupa Enerst

Court Interpreter: Sakala

Public Prosecutor for Environmental Council: H. K Mwale

Counsel for Accused: Mr. Banda S. C

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Counsel for Accused: Mr. M. Ndulo

: In house Counsel – KCM

**PARTICULARS OF THE REPRESENTATIVE OF KCM**

Name: David E. Ngandu

Age: 51 Years Old

Residential Address: No. 10 Open Ema Avenue Chingola

Occupation: General Manager Konkola Copper Mine (KCM) Nchanga

Court: Charge put to the Accused fully in English.

**COUNT 1**

Court: Do you understand the charge and how do you plead?

Accused: I understand the charge and I admit the charge.

**VERIFICATION**

Yes KCM populated the Kafue River at Chingola.

**COUNT 2**

Accused: I understand the charge and I admit the charge.

**VERIFICATION**

Yes KCM did discharge the said liquor solution into the Kafue River.

**COUNT 3**

Accused: I understand the charge and I admit the charge.

**VERIFICATION**

1. We did not Report the matter.
2. We were ignorant of the pollution. By the time we reported it was too late.

-2-





**COUNT 4**

Accused: I understand the charge and I admit the charge.

**VERIFICATION**

1. We did discharge the substance.
2. The discharge was not in compliance of the Act.

**VERDICT**

Plea of GUILTY entered in respect of the 4 counts.

**Counsel for the Accused:** Those are my instructions.

**Public Prosecutor:** The state is ready with the written facts.

**Court:** The written facts read in open court and hereto attached marked 'A'.

**Public Prosecutor:** In brief these are the written facts. In addition to the facts, the state wants to submit Report from Alfred Night to show levels of pollution. Report from Ministry of Livestock to show the effect of the pollution on the fish.

**State Counsel:** I am objecting to the documents because these documents were not given to us. The state had informed us that there are no procedural issues which we are supposed to know. We are taken aback as to the production of the document.

**Public Prosecutor:** The documents are being produced in addition to the facts.

**State Counsel:** It is not a very contentious issue since the state have said the document are for the reference of the court. However, may my concerns be noted by the court.

**Court:** Since the issue been settled, public prosecutor, proceed.

**Public Prosecutor:** The next report is the consolidated Report from ECZ and the photos taken from the site.



**Court:** Accused you have heard the facts read before me. Are the facts True and Correct?

**Accused:** The facts are True and Correct.

**State Counsel:** These are my instructions.

**VERDICT:** Accused on your own plea of **GUILTY**, I find you **GUILTY** of the offences charged as per charge sheet and I **CONVICT** you accordingly.

**PCS**

Accused is a first offender.

**MITIGATION**

**State Counsel:** To start with the accused is a first offender as regards these charges. This entitles the accused to leniency.

Secondly, the Court will also note that the accused admitted the charge readily. Accused has served the court time. As a company through its Managers were very remorseful and regret any damage or loss to the environment and the community at Chingola. KCM is a huge mining company, the biggest in the country.

The company has dangerous substances which are critical to its operation such as the substances today. Such incidences do not occur daily. This is a testimony of the due care that the company carries out. It is common cause that immediately the report was received, remedial measures were put in place. Such measures were for the confailing of the problem. Counsel Ndulo will address the court on the measures put up by the accused to mitigate the effects of the pollution.

**Counsel Ndulo:**

In addition to the submission of the SC, my clients have done a thorough investigation and the cause identified. This problem arose because of the failure of the TLP plant. The Tanks are 40 years old. The incident was unfortunate and my clients regrets the same.





My client has come up with an action plan to prevent the similar incident happening again. KCM will therefore expand the concentrator and replace the old Tanks at the TLP. This will allow KCM meets its environmental obligations. The TLP Tanks will be changed to stainless steel. The Tanks will be changed by September 2011. This will make the Tanks strong and Avert a similar accident occurring in future. This is our submission in mitigation.

#### SENTENCE

I have taken into consideration the mitigation of the accused. I have taken into consideration that the Accused is a first offender. I have also taken into consideration that KCM has readily admitted the charge. I have also noted that KCM has put in place various measures to prevent the re-occurrence of similar accidents in future. Further I have also noted that the company is remorseful for whatever happened.

Having considered these mitigation factors, may I state that KCM indeed is a big company but does not mean that the company must go to sleep when it comes to monitoring the use/operations of the machines. KCM has very qualified people in the land who know what they do when at work. It is in this vein that KCM should have acted quickly to avert the situation.

May I also state that KCM should ensure that similar accidents are avoided because in future the accident may be so huge that no amount of money will ever be received to compensate the damage. KCM is to abide by the programme elaborated in Court as to the repairs of the Tanks of TLP. The sentences to run consecutively.

That being the case I will fine the accused as follows:

In count 1, the accused is fined the sum of K10,800,000.

In count 2, the accused is fined the sum of K10,800,000.

In count 3, the accused is fined the sum of K270,000.00.



In count 4, Accused is fined the sum of K100,000.00. All the stated sums are to be paid by the 29<sup>th</sup> of November 2010. In Default 3 years Imprisonments. Informed Rights of Appeal Within 14 days.

**Public Prosecutor:** We seek guidance on the court on the effect of 91 (3) of Act.

**Court:** I will need to look at the act for me to be able to render a found ruling in law.

**Counsel:** We have also being taken aback. This matter has been closed. And an objection at this time does not apply.

If the state is not happy, the door is open for an appeal. The accused is a corporate entity. I don't know what the state wants to achieve.

**Court:** In deed the court agrees with State Counsel. The matter has been closed. If the state is not happy, they are Informed of Their Right of Appeal.

**SIGNED**

**SILOKA S. V ESQ**

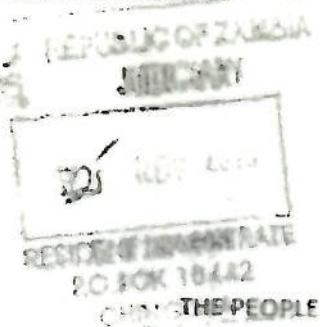
**RESIDENT MAGISTRATE**

**25/11/2010**





IN THE SUBORDINATE COURT  
OF THE FIRST CLASS FOR THE CHINGOLA DISTRICT  
HOLDEN AT CHINGOLA  
(CRIMINAL JURISDICTION)



1C/232/2010

V

KONKOLA COPPER MINES PLC

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STATEMENT OF FACTS

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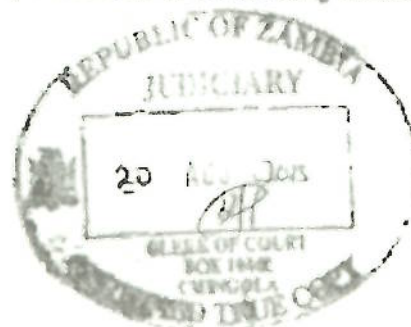
The Accused Konkola Copper Mines Plc stands charged with four counts.

**Facts in Count 1**

In Count 1 the accused stands charged with the offence of Polluting the environment contrary to section 91(1) of the Environmental Protection and Pollution Control Act No. 12 of 1990 Cap 204 of the Laws of Zambia. Facts are that on 31<sup>st</sup> October 2010 Officers from Environmental Council of Zambia received information to the effect that the now Accused on unknown dates but between 29<sup>th</sup> October 2010 and 31<sup>st</sup> October 2010 did pollute the environment namely Kafue River at Chingola in the Chingola District of the Copperbelt Province of the Republic of Zambia, and when the report was verified, the information was found to be true

**Facts in count 2**

In Count 2, the accused stands charged with the offence of Discharging poisonous, toxic, ecotoxic, obnoxious or obstructing matter, radiation or other pollutant into the aquatic environment contrary to sections 24 and 91(1) of the Environmental Protection and Pollution Control Act No. 12 of 1990 Chapter 204 of the Laws of Zambia. Facts in this count are that on 31<sup>st</sup> October 2010, Environmental Council of Zambia Officers received information to the effect that the Accused had discharged pregnant liquor solution (PLS) being poisonous, toxic, ecotoxic, obnoxious or obstructing matter, radiation or





other pollutant into the aquatic environment namely the Kafue River. The pollution occurred between 29<sup>th</sup> October 2010 and 31<sup>st</sup> October 2010.

#### Facts in count 3

The Accused stands charged with the offence of willfully failing to report an act or incident of pollution of the environment contrary to section 86 subsections (1) and (3) of the Environmental Protection and Pollution Control Act No. 12 of 1990 Cap 204 of the Laws of Zambia. Facts in this count are that on unknown dates but between 29<sup>th</sup> October 2010 and 31<sup>st</sup> October 2010, a pollution incident did occur at the Accused's premises leading to the pollution of the environment at Chingola and that the Accused did willfully fail to report an incident of pollution without delay.

#### Facts in count 4

The Accused stands charged with the offence of failure to comply with the requirements for discharge of effluent contrary to Regulation 12 (b) of the Environmental Protection and Pollution Control [Water Pollution (Effluent and Wastewater)] Regulations Statutory Instrument No. 72 of 1993. Facts in this count are that on unknown dates but between 29<sup>th</sup> October 2010 and 31<sup>st</sup> October 2010, the now accused did fail to comply with the requirements for discharge of effluent by discharging into the aquatic environment Pregnant Liquor Solution (PLS) with concentration above the prescribed statutory limits.

Officers from the Environmental Council of Zambia visited the site of the pollution on the Kafue River to verify the information received. The officers also contacted the accused to find out what they knew about the state of the river since the river had changed colour to deep blue. The accused professed ignorance at the first instance but later agreed that the source of the pollution was the Tailings Leach Plant at the Nchanga Integrated Business Unit in Chingola. The Accused was asked as to whether there was authority for the action of pollution, discharge of PLS, and discharge of PLS above statutory limits. The Accused failed to produce any proof of such authority.

Following this, Inspector Webby Simwayi took up investigations. The inspector with reference to the aforementioned facts interviewed the representative of the Accused with respect to the pollution of the Kafue River but <sup>he</sup> could not be given a satisfactory reply by the Accused. On being satisfied that a contravention of the Environmental Protection and Pollution Control Act had taken place, the officer then made up his mind to institute criminal proceedings against the Accused. The said proceedings were instituted in accordance with section 90 of the Criminal Procedure Code Chapter 88 of the Laws of Zambia.

The Accused had no justification or lawful authority to pollute the environment, discharge PLS (a poisonous, toxic, ecotoxic, obstructing matter), fail to report a pollution incident and discharge PLS above prescribed limits in the Water Pollution Control Regulations





