

IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT DURBAN

Case no: D 306/11

In the matter between:

COMMUNICATION WORKERS UNION

Applicant

and

THLALAFENG PLACEMENTS

First respondent

D SIYAKHANE

Second respondent

JUDGMENT

STEENKAMP J:

INTRODUCTION

- [1] This is an application for leave to appeal against my judgement in an urgent application handed down on one June 2011. In that judgement, I dismissed an application for a *rule nisi* declaring the respondents to be in contempt of a court order; joining the second respondent to the proceedings; and permitting him to detention in prison for a period of 15 days.
- [2] The applicant only applied for leave to appeal against a portion of the judgement. It does so on the following grounds:

2.1 that I erred in finding that the respondents had complied with the court order of the Honourable Justice Cele dated 19th of April 2011; and

2.2 that I erred in finding that the respondents had not acted mala fide.

[3] The issue that is raised by the proposed appeal is what is the proper meaning of the consent order of 19 April 2011 that reads as follows:

"The respondent is ordered to immediately reinstate the remuneration and further benefits of the contract of employment to the applicants members with effect from April 2011."

[4] The further ground is that, on a reasonable interpretation of the order, the respondents acted mala fide and fraudulently.

[5] In my judgement, I noted obiter that the conclusion to which I have come did not formally with any sense of comfort. It stands to reason that there is a reasonable prospect of another court coming to a different conclusion.

[6] Leave to appeal is granted. Costs are to be costs in the appeal.

STEENKAMP J

Date of judgment: 5 August 2010

For the applicants: M Pillemer SC

Instructed by: Brett Purdon attorneys, Durban.

For the respondent: M de Klerk

Instructed by Mashiane, Moodley & Monama Inc.