

SOUTH AFRICA / JUDGMENT

Communication Workers Union v Thlalafeng Placements and Another (D306/11) [2010] ZALCD 16 (5 August 2010) [2010] ZALCD 16

COURT
Labour Court Durban

BEFORE
Steenkamp

CASE / FILE NUMBER
D306/11

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Not
reportable
Of
interest to other judges
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.

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