# IN THE LABOUR COURT OF SOUTH AFRICA
# (HELD AT JOHANNESBURG)

Case No: J 453/06 & J 509/06
**(Reportable)**

In the matter between:

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| SECURITY SERVICES EMPLOYERS' ORGANISATION ("SSEO") | 1ST APPLICANT |
| SOUTH AFRICAN NATIONAL SECURITY EMPLOYERS ASSOCIATION ("SENSEA") | 2ND APPLICANT |
| SOUTH AFRICAN INTRUDER DETECTION SERVICES ASSOCIATION ("SAIDSA") | 3RD APPLICANT |
| WESTERN CAPE SECURITY ASSOCIATION ("WECSA") | 4TH APPLICANT |
| SECURITY INDUSTRY ASSOCIATION OF SOUTH AFRICA ("SIASA") | 5TH APPLICANT |

And

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| SOUTH AFRICAN TRANSPORT AND ALLIED WORKERS UNION ("SATAWU") | 1ST RESPONDENT |
| NATIONAL SECURITY AND UNQUALIFIED WORKERS UNION ("NASUWU") | 2ND RESPONDENT |

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| PROFESSIONAL TRANSPORT WORKERS UNION ("PTWU") | 3RD RESPONDENT |
| SOUTH AFRICAN PRIVATE SECURITY WORKERS UNION ("SAPSWU") | 4TH RESPONDENT |
| SECURITY OFFICERS CIVIL RIGHTS AND ALLIED WORKERS UNION ("SOCRAWU") | 5TH RESPONDENT |
| DEMOCRATIC UNION SECURITY WORKERS ORGANISATION ("DUSWO") | 6TH RESPONDENT |
| SOUTH AFRICAN CLEANING SECURITY AND ALLIED WORKERS UNION ("SACSAAWU") | 7TH RESPONDENT |
| UNITED PRIVATE SECTOR WORKERS UNION ("UPSWU") | 8TH RESPONDENT |
| SOUTH AFRICAN NATIONAL SECURITY OFFICERS FORUM ("SANSOF") | 9TH RESPONDENT |
| "PRWU" | 10TH RESPONDENT |
| FOOD CLEANING AND SECURITY WORKERS UNION ("FOCSWU") | 11TH RESPONDENT |
| NATIONAL ASSOCATION OF SECURITY WORKERS UNION | 12TH RESPONDENT |
| THOSE PERSONS WHOSE NAMES ARE LISTED IN ANNEXURE "A" TO THE NOTICE OF MOTION DATED 20 APRIL 2006 | FURTHER RESPONDENTS |

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JUDGMENT

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**MOKGOATLHENG AJ**

Introduction

[1] This is a consolidated judgment in respect of the above two mentioned cases. The Court issued two rules *nisi* pursuant to two applications respectively instituted by the Applicants against the Respondents.

[2] The Applicants have instituted proceedings under case no J 453/06 and J 509/06 against the First and further Respondents and on the 24 March 2006 and 5 April 2006 respectively obtained rules *nisi*.

[3] The rule *nisi* issued in the two respective applications were individually varied respectively, extended and made returnable on the 26th of July 2006.

[3] The Applicants have also instituted applications against the Respondents for the contempt of the Court Orders respectively issued in both cases. As a matter of convenience and to avoid traversing a similar application under case number J 453/06 predicated on the same facts, counsel representing the parties agreed that, because the contempt of court

applications in both matters are premised on the same issues of fact and law, the outcome in case number J 509/06 should apply to case number J 453/06.

[4] The contempt applications are opposed as well as the application for a costs order arising from a discharged rule *nisi*.

[5] The Applicants seek an order in the following terms, that;

(a) the First Respondent be fined an amount to be determined by this Court, for contempt of the Courts Order for its failure to comply with the terms thereof, and

(b) that the additional Further Respondents be committed to prison for a period to be determined by this Court, for contempt of the Court Orders.

[7] Pursuant to a protected strike by the First Respondent's members, the Applicants on the 24th of March 2006, instituted proceedings under case no. J 453/06 for an order;

(a) interdicting First Respondent's members from harassing, and / or

(b) intimidating non striking and replacement employees of the Applicants' members and other ancillary relief.

[8] On the 24th of March 2006, a rule *nisi* was granted returnable on the 19th of April 2006. The First and Further Respondents did not file an answering affidavit in opposition to the application.

[9] On the 5th of April 2006 the Applicants instituted an application (the main application) against the Second Respondents under case no. J 509/06 for an order;

(a) interdicting and restraining the Second to Further Respondents from intimidating, harassing and/ or assaulting non striking employees of members of the Applicants for the duration of the strike and other ancillary relief. The costs were reserved.

[10] A rule *nisi* was granted returnable on the 19th of April 2006. On the 19th of April 2006 both cases were adjourned at the request of the Applicant's

to the 3rd of May 2006 and the rule *nisi* embodied in both matters were extended to that date.

[11] The Applicants allege that the reason for seeking these orders was to enable them to launch interlocutory proceedings *inter alia* for the,

(a) joinder of additional further Respondents in both cases, and

(b) for the variation of the two orders respectively.

[12] On the 26th of April 2006, at the hearing of the variation application, the Respondents opposed the granting of the relief sought by the Applicants.

[13] The Respondents did not file any substantive answering affidavits opposing the relief sought; they opposed and argued the matter on the Applicants' papers.

[14] Having heard argument in the interlocutory applications, the Court granted variations of its two previous orders respectively and ordered each party to pay its own costs. The return date of the two rules *nisi* embodied in the two varied orders was extended to the 26th of July 2006.

The Legal Principles Applicable to Contempt Proceedings

[15] The object of contempt of court proceedings is to compel compliance with the court order in order to vindicate the Courts' honour resulting from the disregard of its order. A court will only grant a contempt order when the Respondent's default is wilful and *mala fide*.

[16] It is common cause that the strike ended on the 26th of June 2006, a month before the institution of the application for the contempt of court. The rules *nisi* were both discharged on the 26th of July 2006, only the question of costs remained to be adjudicated.

[17] In terms of the decision in *Fakie NO v CC 11 Systems (Pty) Ltd 2006 (4) SA 326 (SCA) at 338C -339A*, the Applicants have to show,

(a) the existence of the order granted against the Respondents,

(b) the order has been served or has come to the attention of the Respondents,

(c ) the Respondents have failed to comply with the order and have not furnished an explanation raising a reasonable doubt, and

(d) the Respondents acted wilfully and *mala fide*.

[18] The Respondent in order to avoid being found guilty in contempt of court no longer bear a legal burden to disprove wilfulness and *mala fide* on a balance of probability. If there is a reasonable doubt about the existence of any one of these three elements, a Court will not grant an order for committal.

[19] Our Courts have held that once it has been proven that an order was issued and that the Respondent disobeyed or failed to comply with same, wilfulness will be inferred. It must also be shown that the disobedience was not only wilful but was also *mala fide.*

See *HEG Consulting Enterprises (Pty) Ltd and Others v Siegward and Others 2001 (1) SA 507 (C) at 518E.*

[20] There is an evidential burden on the Respondent to demonstrate their *bona fides* and the fact that the disobedience of the court order was not wilful or *mala fide*.

[21] The purpose of civil contempt proceedings is two fold firstly, the imposition of a penalty in order to vindicate the Courts honour consequent upon the disregard of its order and, secondly, to compel the compliance thereof. See *Loubscher v Loubscher 2004 (4) SA 350, at 353 – H.*

(a) Civil contempt is defined as the wilful or *mala fide* refusal or failure to comply with a court order. The primary purpose of contempt proceedings is to ensure compliance with a court order, and contempt proceedings bring to its logical conclusion an order given by a court which has been deliberately disobeyed. See *Naidu and Others v Naidoo and Another 1993 (4) SA 524 D and CLD) at 544 H-J. and Coetzee v Government of the Republic of South Africa: Matiso and Others v Command Officer, Port Elizabeth Prison, and Others 1995 (4) SA 631 (cc) (1995 (1)) BCLR 13382) para [12] at 643B-C.*

(b) *In the Naidu Case supra Alexander J held that "By the time, however, that the present matter was argued on the 12 March this particular dispute had ceased to exist. The sale has not only been cancelled but possession of the business handed back to the Naidus. Counsel for the respondents submitted accordingly that the very basis on which the committal order depended had disappeared and the order – whatever the merits of the dispute no longer the Applicants. His contention rested squarely on the full Court decision of Cape Town Ltd v Traders Directories (Pty) Ltd and Others 1956 (1) SA 105 (A) it was held that "a litigant has no locus standi to seek an order for contempt arising out of a breach of an order obtained in a civil proceeding where the punishment is not calculated to coerce compliance with the order."*

[22] The Applicants seek the costs of the application, and contend that they have put up a considerable body of evidence which justifiable the granting of the relief sought.

[23] The First and additional further Respondent's response to the Applicants allegations is that; "*they were neither in a position to bring an end to the*

*violence, nor to ensure or frustrate compliance with the orders granted by this Honourable Court*."

[24] The Applicants contend that the First and additional further Respondents have not factually substantiated what the former categorises as a general, bald and vague reply to their formidable body of factual evidence.

[25] The Applicants contend that the First and additional further Respondents were obliged to proffer reasons why they have failed to factually substantiate these general bald allegations.

[26] The Applicants submit that this allegation is far fetched and is clearly untenable and can safely be rejected on the papers because, the purported dispute of fact is not real, genuine or *bona fide.*

<u>The Principles Regarding Costs</u>

[27] The Labour Court derives its power to grant costs orders from the provisions of section 158 (1) (a) (vii) read with Section 162 of "the Act".

[28] In terms of section 162, "the Labour Court may make an order for the payment of costs, according to the requirements of the law and fairness". Zondo AJ (as he then was) in the case of *Guard Security Services (Pty) Ltd v Transport and General Workers union and others (1997) 18 ILJ 380 (LC)*, "in considering the meaning of section 162, remarked that the legislature intended that the court should give equal weight to both the requirements of the law and those of fairness, he postulated the following enquiry.

*"Having regard to all the relevant factors in this matter would it accord with the requirements of law and fairness to make an order of costs, and if it would, what costs order should be made? If the answer is that it would not accord with the requirements of the law and fairness to make a costs order then this court should not make any costs orders"*

[29] In the case *of NUM v East Rand Gold and Uranium Co. Ltd 1992 (1) SA 700 (A)***,** Goldstein JA in considering the requirements of law and fairness with regard to the issue of costs, adopted the following approach,

*(a)* *"the provision that the requirements of the law and fairness are to be taken into account is consistent with the role of the industrial court as one in which both law and fairness are to be applied,*

*(b)* *the general rule of our law that in the absence of special circumstances costs follow the event is a relevant consideration. However, it will yield where considerations of fairness require it.*

*(c)* *Proceedings in the industrial court may not in frequently be a part of the conciliation process. This is a role which is designedly given to it.*

*(d)* *Frequently the parties before the industrial court will have an on going relationship that will survive after the dispute has been resolved by the Court. A cost order especially where the dispute has been a bona fide one, may damage that relationship and thereby detrimentally affect industrial peace and the conciliation process.*

*(e)* *The conduct of the respective parties is obviously relevant especially when considerations of fairness are concerned."*

[30] In applying these legal principles, I am entitled to consider all the relevant circumstances surrounding this matter. In my view there is no rule of law or of public policy which precludes the granting of costs if a Rule nisi is discharged and not confirmed.

[31] The rules *nisi* pertinently directed the First Respondent's office bearers, officials and shop stewards to call upon their members;

(a) to desist from harassing and or intimidating non striking and replacement employees of the Applicants' members, and

(b) to desist from engaging in any acts of violence or other unlawful conduct.

[32] The averments predicating the Applicants founding affidavit have not been assailed by the Respondents, they remain undisputed.

[33] The *rule nisi* granted on the 24th of March 2006 in respect of case no J 453/06 was not opposed. The order sought by the Applicants in paragraph 1.4 is couched in the following terms

(a) *"ordering such respondents who opposes this application to pay the costs of this application, jointly and severally the one paying the other to be absolved"* costs, for their failure to comply with the terms of the orders,

(b) that the additional further Respondents be committed to prison for a period to be determined by this court, for contempt, for their failure to comply with the terms of the orders.

The Grounds on which the Relief of Claimed

[34] Hendrik A S Myburgh the Applicants' deponent in the main application and interlocutory applications states that;

He gave instructions that the office of the First Respondent be visited in order to confirm whether or not as required the orders were affixed to the entrances thereof. From such visits it emerged between the 19 May 2006 and the 13 June 2006, the orders were not displayed at the following of the First Respondent offices.

[35] Myburgh states that during radio, electronic and print interviews the First Respondent's representatives were presented with a pre-eminent and appropriate opportunity to publicise the terms of the orders or communicate such terms to First Respondent's members, and say that the latters representatives never alluded to the orders or the terms thereof.

[36] Myburgh states that he is not aware of any circulars distributed by the First Respondent in which the orders and their terms were communicated to its members, neither was reference made of the orders in such communication made on the First Respondents' web-site.

(a) Pietermaritzburg

(b) Richards Bay,

(c) Standerton,

(d) Durban

(e) Pinetown

(f) Bethlehem

(g) Port Shepston

(h) Nelspruit,

(i) Pretoria

(j) Johannesburg

(k) Polokwane

(l) Bloemfontein

(m) Algoa

[37] Myburgh states that he has gathered affidavits from various persons who visited the First Respondents' offices country wide showing that the First Respondent did not post the orders inside its various offices.

[38] Myburgh submits that the Respondents have not complied with the terms of the Orders, and are clearly in breach thereof.

The Visits to the First Respondent's Offices

[39] Sifiso Radebe does not identify the ninety (90) SATAWU workers who assaulted Max Haka, or the persons who shot at Ndlovu and informed him that the latter was dead.

[40] Lionel Knight does not identify the SATAWU members who made a fire and blocked access to Magnum Shield offices in Heriotdale.

[41] Errol Herman Bannock does not identify the persons who gathered on the 6th of June 2006 in front of the offices and blocked the main gate of Fidelity Security Services in Bloemfontein, further the one's he could identify as security officers, he is not able to state what they did or whether they were members of the First Respondent.

[42] Stanley Ndebele states that on the 13th June 2006 he and Zacharia Mthethwa were assaulted at the Beyers Naude Square by a mob. He is not able to identify any of the persons who assaulted them.

[43] Zacharia Mthethwa states that on the 13th of June whilst at work at Edgars City Store he was assaulted by persons and dragged to Beyers Naude Square where he was stripped naked. He is not able to identify any of his assailants.

[44] Bantu Sangoni the Applicants' attorney's article clerk states that on the 26th May 2006 he attended at the head office of the First Respondent. On the 29th May 2006 he attended at the First Respondent's regional and local offices. He says that at the three locations he discovered that no copies of the court order were affixed.

[45] Willem Petrorius a branch manager based in Port Elizabeth states that he attended at the First Respondent's regional offices on the 31st of May 2006 and discovered that the Court Orders were not displayed.

[46] Victor van Rooyen and employee of Fidelity Security Services states that on the 7th June 2006 he attended at the offices of the First Respondent in Bloemfontein, and discovered that the Court Orders were not displayed.

[47] Myburgh submits that the First and additional further Respondents have deliberately and consciously not complied with the orders and are in breach thereof given the large scale of violence and the continuous publicity.

<u>The question whether the Application was properly enrolled</u>

[48] The application in case no J 509/06 was issued and served on the Respondents on the 06 July 2006. The matters were enrolled on the unopposed roll.

[49] Mr Van der Riet on behalf of the Respondents contends that because the applications came before court on an urgent basis in March and April

2006 respectively, urgent relief was granted on an unopposed basis, and submits that the assumption was that the circumstances which gave rise to the matters being treated as urgent applications still persists.

[50] Mr van der Riet submits that as far as the contempt application is concerned, there is absolutely no basis in terms of the Rules of this Court that the matter could be set down today, save if it was an urgent application, that the Applicants opportunistically utilised the fact that it was the return date, and the costs order issue was still outstanding, they enrolled the contempt application without making a case for urgency.

[51] Mr van der Riet argues that they came to court expecting a rule to be issued, and says that no interim relief is sought, that now his clients are called upon to file answering affidavits because the Registrar has erroneously allowed the matter be set down utilising the same case number as the original urgent applications.

[52] The Respondents have had three weeks within which to file their answering affidavits, they elected not to. The Registrar has set down the contempt application for today. The Respondents were aware that the contempt application is set down for today. They did not raise an

objection with either the Registrar or the Applicants prior to today. In my view the contempt application is properly enrolled.

[53] Mr Winchester on behalf of the Applicants contends that the Applicants have established a *primi facie* case because there is irrefutable proof that the Respondents have failed to comply with those parts of the order that specifically enjoined them to take positive action, these being that;

(a) the First Respondent display notices in its offices, and

(b) the First Respondent translate the orders to be displayed in its offices.

[54] Regarding the question of costs, Mr van der Reit argues that the strike was resolved on the 22 June 2006, that the respective attorneys agreed that the rules *nisi* should be discharged, that the Applicants attorney requested that the Respondents pay the Applicants costs, in his view this unjustifiable.

[55] Mr Winchester contents that the Applicant placed a veritable mountain of evidence about the events which unfolded during the strike, that in fact, as a result of the escalation of the violence the Applicants applied for a

variation of the orders. The Respondents did not oppose the initial application, they only opposed the variation application, that logically the Applicants are entitled to costs.

[56] The Court Orders required the Respondents to do something or to refrain from doing something in compliance with the Court Orders, this meant that the Respondents were do what is reasonably necessary to ensure that the orders is complied with.

[57] Mr Winchester argues that the Applicants have met the requirements of an interim interdict, that this is evidenced by the Court having granted the first orders and the variation orders in both cases, that the Applicants have at least established a *prime facie* case which satisfies the test for costs. Order to be granted in their favour.

[58] Mr Van der Riet argues that it is impermissible for the Applicants to contend that they are entitled to costs on the basis that they were entitled to apply for an interim interdict, and submits that the Applicants would have been entitled to costs they had obtained a final interdict.

[59] Mr Van Der Riet argues that when the Applicant applied for a rule *nisi* they did not ask that any of the Respondents to pay the costs, unless in the event of opposing the application.

[60] Mr. Van Der Riet contends that on the 26 April 2006 when the Rule Nisi was amended to include a paragraph 1.13, that the respondent jointly and severally pay the costs of this application, that meant that on the return date they would have to show cause why they should not be ordered to pay costs at that stage, that is in the case a final interdict is granted.

[61] Mr Van Der Riet argues that the Respondents did not attempt to put up evidence to establish a defence on the merits, but had only placed facts to persuade the Court not to order them to pay costs and he contends that there is no basis for the Applicants to say that the First Respondent could actually stop the violence and therefore that it should be ordered to pay the costs, and says that Simons's affidavit was not an attempt to create a defence on the merits.

[62] Mr Van der Riet contends that it has not been shown that each and every one of the 78000 the First Respondents' members were involved in violence, that it would be unfair and unjust to make a cost against all the

78000 members, and says it would be unfair to order the First Respondent to pay the costs order of this application when it did not oppose the granting of the interim relief and only opposed the variation of the rules *nisi* that this is by the Applicant attempt to place an onerous duty on it, that any event it would be fair and equitable that each party pay its own costs.

[63] Mr Van Der Riet contends that the purpose of a contempt application is to primarily to ensure compliance, and because it has a criminal element the applicant has to prove beyond reasonable doubt all the elements of contempt, and only then is an inference of wilfulness and *mala fide* triggered.

[64] Mr Van Der Riet argues that the Applicant do not have locus standi to bring the contempt application if it instituted exclusively for a punitive element  without incorporating an application to ensure compliance, and in support of this argument he referred me to the case of Cape Times Ltd v Traders Directories (Pty) Ltd and others 1956(1) SA 105 (A) at 120F - 121G.

[65] Mr van der Riet argues that the strike ended on the 22 June 2006, that the strike was the cause of the unlawful behaviour, and submits that the rule *nisi* or interim interdict sought now is not going to be contravened, that because the Applicants are not seeking confirmation thereof, as the rule *nisi* was discharged there will no longer be an order to comply with, or to contravene, that this renders the contempt application nugatory.

[66] Mr Van Der Riet argues that once there is no question of enforcing compliance; that what only remains is the punitive element relating thereto, then contempt proceedings by way of notice of motion is not available to the Applicants, the only remedy is to institute a criminal prosecution either through the state or by a private prosecution.

[67] Mr Winchester argues that the Respondents were required to file answering affidavits, they elected not to, they reasoned that because the strike was settled it would be inappropriate to deal with the matter any further, and submits that the Applicants have led evidence, that whether the pleadings are closed or not is irrelevant, the "Jenkins and Boilermaker Principle" applies, and that the court does the best it can with the material available to it.

[68] Mr Winchester of behalf of the Applicant argues that there is absolutely nothing indicating that any positive action had been taken by the Respondents to ensure that the terms of the Court Orders are brought to the attention of its officials, members, and shop stewards, that given the exceptional circumstance, that several persons have already lost their lives, there was an extra burden on the Respondents to ensure that the terms of the Court Orders are complied with.

Evaluation of Evidence and Argument

[69] The *rules nisi* was extended by consent whilst the parties attempted to settle the protected strike. The settlement negotiations were protracted and involved most, if not all the trade unions in the security sector, and most, if not all employer organisations.

[70] The applications for the variation of the *rules nisi* were not opposed, in fact the Respondents cooperated and acceded to the variations which define and give proper effect to the Court Orders.

[71] In my view, the conduct of the First Respondent cannot be adjudged to have been obstructive during the applications for the *rules nisi.*

[72] It might be properly contended that the First Respondent's individual members made themselves guilty of unlawful conduct, there is however, no cogent evidence that the First Respondent's officials incited their members to commit unlawful acts or that they aided and abetted their individual members' unlawful conduct in any manner.

[73] The Applicants and First Respondent are fated to continue their relationship as representatives of their respective members in the employment relationships. These employment relationships in my view are an important factor in determining the allocation of costs.

[74] The First Respondent's individual members who were responsible for committing unlawful acts were not positively identified, in any event, if any of the perpetrators of unlawful conduct are subsequently identified the Applicants have disciplinary mechanisms as a remedy to discipline the culprits, in order to demonstrate that their alleged unlawful conduct is not condoned.

[75] In relation to the contempt of the Court Orders The First Respondent's members were involved in a protected national strike which engendered

horrific incidents of violence and vandalism which resulted in several persons being injured, being murdered, private and public property being damaged, destroyed and huge financial losses.

[76] The terms of the rules *nisi* were pertinently intended to emasculate the whirlwind of violence, the unlawfulness and destruction engendered by the protected strike.

[77] In Northern Star (Pty) Ltd (under judicial liquidation) v Serobatse and another (2005) 26 ILJ 56 (LAC) Zondo JP at 63 para 18 amongst others enunciated that persons who disregarded court orders simply because they do not agree that such Court Orders should have been issued, would in no time render society to be disdainful of the law, and such conduct would result in chaos and lawlessness.

[78] Court Orders are made to be obeyed and to be complied with, this in my view is the hallmark that distinguishes a civilised democracy which espouses the rule of law as against the tyranny of the oppression of lawlessness. Our Courts deprecate the disobedience of Court Orders as inimical to the foundational values of the Constitution of the Republic of South Africa Act 108 of 1996.

[79] Mr Winchester has urged this court to confirm the rule nisi. In my view it will serve no purpose in confirming the rule *nisi* because, the causa predicating the rule *nisi* has been extinguished by the settlement of the protected strike.

[80] In my view there is no substantive evidence showing that the First and further Respondents have breached the terms of rule *nisi* issued on the 24th of March 2006 either directly or indirectly in adding and abetting the First Respondents members unlawful conduct as described in the rule *nisi*, nor has it been shown that individually they did not take reasonable steps to ensure that the terms of the rules *nisi* are complied with, bar the below enumerated exception.

[81] *The First Respondent and additional further Respondents were pertinently ordered to ensure that, "a copy of this order together with the translation thereof in the language or in those languages commonly used by the First Respondent's members ("the translation") is immediately affixed to all entrances of all offices of the First Respondent through out the Republic of South Africa ("the First Respondent's offices") and to ensure that such documents, in legible condition, remained thus*

*continually affixed until such time all of the First Respondents members who are employed in the Security Industry returned to work",*

[82] In my view the Applicants have shown that the First and additional further Respondents have not complied with the aforementioned part of the Court Orders.

[83] The First and further additional Respondent have not proffered any explanation whether they have taken all reasonable steps to ensure that the Court Orders are complied with except the bald unsubstantiated allegations that, *"they were neither in a position to bring an end to the violence, nor to ensure or frustrate compliance with the orders granted by this Honourable Court"*.

[84] In my view this vague, general and bald allegation is not sufficient to rebut the inference of wilfulness and *mala fides* which are the prerequisites demonstrating the commission of the offence of contempt of a Court Order.

[85] In the premises, the Applicants have demonstrated that the First and further additional Respondents were in contempt of Court Orders before the rules *nisi* were discharged on the 26 July 2006.

[86] In the premises in exercising my discretion, I am of the view that the paramountcy of the continuation of the employment relationships between the parties militates against making a costs order against the First Respondent.

[87] In the premises having considered all the circumstances pertaining to this matter the following order is made.

(a) The First Respondent is ordered to pay the amount of R500 000.00 for contempt of with the terms of the Court Orders. The fine is suspended for the period of five years on condition that the First Respondent is not found guilty of contempt of this Courts Orders.

(b) The Second and additional Respondents are enumerated below;

(a) Bheki Ndima

(b) Bohlale Joshua Koloi

(c) George Mozanakele Doporo

(d) Nomsisi Jane Saul

(e) Mamakala Lucas Leeuw

(f) Jacob Tinki Moeketsi

(g) Tefo Luca Movobane

(h) Ngaka Isaia Mekhoe

(i) Poloko Junior Oliphant

(j) Seuntjie France Malakanye

(k) Jan Cane Mmusi, are sentenced to imprisonment for a period of six (6) months which is wholly suspended for the period of five years on condition that the Second and additional further Respondents are not found guilty of contempt of this Courts Orders

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**MOKGOATLHENG AJ**

ACTING JUDGE OF THE LABOUR COURT OF SOUTH AFRICA

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| Date of hearing | : | 26th July 2006 |
| Date of Judgment | : | 4th April 2007 |

Appearance

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|---|---|---|
| For the Applicant | : | Adv. Winchester S C |
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