

**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**

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**JUDGMENT**

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**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.

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**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.