

Disagreeing to agree: Does non-compliance constitute contempt of court?

 By [Jacques van Wyk](#)

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Where an employer or employee fails to comply with a court order, does such failure constitute contempt of court?



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Court's decision

In the case of *William Sana Mahlangu & Two Others v Laudium Taxi Association and Rashid Ismail J1660/16*, the Labour Court was tasked with determining whether the Laudium Taxi Association (Ladium) and Rashid Ismail (Ismail) were in contempt of court. William Mahlangu and two others were employed by Ladium.

The employees initially referred an unfair labour practice dispute to the CCMA in relation to their suspension from work and outstanding salaries. The dispute was resolved in terms of settlement agreements. The terms of the settlement agreement required the suspension of the employees to be uplifted with immediate effect, and Laudium and Ismail to invite the employees to a meeting by no later than 20 May 2016 where the employees' outstanding salaries would be discussed.

Laudium failed to comply with the settlement agreement. The employees approached the Labour Court, who made the settlement agreements orders of court. Laudium again failed to comply with the orders. The employees then launched an application for contempt of court against Laudium and Ismail. The Labour Court granted a rule nisi, requiring Laudium and Ismail to give reason why they should not be found to be in contempt of court. Ismail argued that they were not in contempt of court as they complied with the court order but could not reach an agreement on the amounts due to the employees.

The Labour Court set out the test for contempt of court, as per *Fakie NO v CCII Systems (Pty) Ltd 2006 (4) SA 236 (SCA)*. The test for contempt is whether the breach was committed deliberately and in bad faith. A deliberate disregard is insufficient to constitute contempt, as the non-complier may genuinely, albeit mistakenly, believe him or herself to be entitled to act in the way alleged to constitute contempt.

The Labour Court held that as the order limited Laudium and Ismail's obligation to discussing outstanding payments, they complied with the order. They did discuss payment of outstanding salaries, but failed to reach an agreement on the issue. Further, the Court held that the settlement agreement was made an order of court on 26 October 2016, which meant that it was not possible for Laudium and Ismail to comply with the deadline of 20 May 2016 as provided by the order. The Labour Court concluded that as per the test for contempt of court provided in *Fakie*, Laudium and Ismail partially complied with the order and their conduct did not constitute a deliberate and bad faith disregard of the order.

Importance of this case

Parties should note the strict test for contempt of court and only approach the court when all the elements of the test have been satisfied.

ABOUT JACQUES VAN WYK

Jacques van Wyk is a director in Labour and Employment Law at Werksmans Attorneys. He was named as a recommended lawyer in Labour & Employment by the Legal500 (2010-2012), and co-authored 'Labour Law in Action - A Handbook on the new Labour Relations Act - 1997' with Frances Anderson. Jacques specialises in commercial employment transactions arising during mergers and acquisitions, corporate restructures, executive employee terminations of employment, drafting employment contracts and letters of appointment; disciplinary codes and procedures; and grievance procedures.

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