

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

(HELD AT BRAAMFONTEIN)

CASE NO: CCT 128/11

In the matter between:

**SOUTH AFRICAN TRANSPORT AND ALLIED
WORKERS UNION AND OTHERS ("SATAWU")** First Applicant

D JAMA AND 62 OTHERS Second to Sixty-Fourth Applicants

and

LEBOGANG MICHAEL MOLOTO N.O. First Respondent

JERRY SEKETI KOKA N.O. Second Respondent

APPLICANTS' PRACTICE NOTE

(a) The names of the parties and the case number

This is set out in the heading.

(b) Nature of the proceedings

Application for leave to appeal against the judgment of the Supreme Court of Appeal, handed down on 30 November 2011.

(c) Brief description of the issues involved

- Whether the matter concerns a constitutional issue within the contemplation of section 167(3)(b) of the Constitution.
- Whether leave to appeal should be granted.
- The merits of the appeal which turn on whether section 64(1)(b) of the Labour Relations Act no. 66 of 1995 (the LRA) requires every participant in a protected strike to give prior notice of such participation to the affected employer.

(d) Portions of the Record

The portions of the record which in the opinion of counsel are

necessary for the determination of this application are:

- Judgment of the Labour Court dated 15 June 2006 (Record, vol 2, pp 121-138)
- Judgment of the Labour Appeal Court dated 14 May 2009 (Record, vol 3, pp 152-256)
- Judgment of the Supreme Court of Appeal dated 30 November 2011 (Record, vol 4, pp 268-280)
- Application for leave to appeal (Record, vol 4, pp 283-302)

(e) Estimated duration of the argument

It is estimated that argument for the applicants ought to last approximately one (1) hour.

(f) Summary of the applicants' argument

1. This Court has held that the proper interpretation and application of the LRA raises a constitutional issue.

2. It is in the interests of justice for leave to appeal to be granted as the correct interpretation of section 64(1)(b) of the LRA will affect virtually every protected strike in future.
3. There is no textual support for the contention that section 64(1)(b) of the LRA requires each prospective participant in a strike to give prior notice of their intended participation in the strike to their employer, either personally or through a representative.
4. The employer's approach to section 64(1)(b) is unduly narrow; it ignores the section as a whole; Chapter IV of the LRA; and the definitions of "strike" and "issue in dispute" that underpin the legislation. In effect, by making the procedural requirements for participation in strike action more onerous, the right to strike is thereby curtailed.
5. In accordance with the above, the Labour Courts have consistently resisted the temptation to import any limitations into the right to strike, beyond those clearly

stated in the legislation itself.

6. The principle of voluntarism that underpins collective bargaining, does not permit interference in the exercise of mutual economic power to resolve collective disputes in the manner suggested by the employer. This gives the employer an unfair and unwarranted advantage in a contest that is intended to be resolved through the exercise of the parties' respective economic power.
7. The absence of this requirement will not, properly considered and in accordance with the above stated principles, lead to disorderly collective bargaining.

(g) Authorities

Applicants' counsel will make particular reference to the following authorities:

Chemical Workers Industrial Union v Plascon Decorative (Inland) (Pty) Ltd [1998] 12 BLLR 1191 (LAC)

POSWA v MEC for Economic Affairs, Environment and

Tourism Eastern Cape 2001 (3) SA 581 (SCA) at 586-7, para 9.

NEHAWU v University of Cape Town 2003 (3) SA 1 (CC); (2003) 24 ILJ 95 (CC) at para 14.

SAPS v POPCRU (2011) 9 BLLR 831 (CC) paras 19 and 20.

DATED at JOHANNESBURG on this the 15th day of MARCH
2012

JG van der Riet SC
TMG Euijen
Applicants' Counsel