

CONSTRUCTIVE CONTEMPT OF A COURT ORDER: THE OTHER WAY OF BEING IN CONTEMPT
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We all know contempt of a Court order to mean the intentional non-compliance with an Order of Court, but what does the term “constructive contempt” mean?

Constructive contempt is essentially contempt for an Order of Court not yet made but which will probably be made, where the act performed is done with the deliberate intention of frustrating the Court Order if and when it is made. In other words, if you are aware of an application against you or expecting a judgment or Order to be made which is adverse to you, and before the judgment is delivered you take steps to render that judgment ineffective, you may be taken to have committed constructive contempt of Court.

You may be wondering how there can be non-compliance of an Order of Court which has not yet been made.

An example of such a scenario is that found in the case of **BOTSWANA TELECOMMUNICATIONS CORPORATION v AC BRABY (BOTSWANA) (PTY) LTD AND ANOTHER**. In this case, the Court was deciding whether the Respondent could publish the “Yellow Pages” in its telephone directory. Before the judgment was delivered, the Respondent proceeded with the publication and distribution of its telephone directory which contained the “Yellow Pages”. The Court found that this conduct by the Respondent would render a judgment against it unenforceable, and therefore this action constituted constructive contempt of an Order of Court yet to be made.

Constructive contempt is particularly relevant in the area of interdicts.

Quite often a party becomes aware that another party is seeking an interdict against it. The interdict sought may be in the form of a prohibitory interdict (precluding the party from doing some act or from continuing with the action complained of) or a *mandamus* (where the party seeks to compel the other to act in some particular way). As a result of learning of the fact that a party is seeking an interdict, the party against whom the interdict is being sought then takes steps to frustrate any interdict which might be granted against it. If these actions are done intentionally so as to render any interdict or Court Order which might be granted nugatory, then the guilty party may be found to be in constructive contempt of Court.

To avoid any allegation of constructive contempt of Court it is therefore advisable that whilst any application is pending or whilst waiting for any judgment to be delivered, you do not engage in any activity that may, or may be seen to be, an attempt to frustrate the Order being sought or which might render the judgment or Order ineffective.