THE LABOUR COURT OF SOUTH AFRICA,
HELD AT JOHANNESBURG

Reportable

Case No: 2025-169704

In the matter between:

MAN MINING TECHNICAL SERVICES (PTY) LTD	**Applicant**
and	
EAGLE CREEK INVESTMENTS 278 (PTY) LTD	**First Respondent**
NEWLYN MINING SOLUTIONS (PTY) LTD	**Second Respondent**
DEPARTMENT OF MINERAL RESOURCES AND ENERGY	**Third Respondent**
THE AFFECTED EMPLOYEES	**Fourth to Further Respondents**

Date heard: 7 October 2025

Date of judgment: 8 October 2025

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Summary: Semi-urgent application to declare a 'purported s197 transfer' and the employment contracts concluded between first & second respondents, and fourth and further respondents, unlawful and invalid. Application dismissed for lack of standing.

JUDGMENT

HARVEY AJ

[1] The question raised by this urgent application is whether section 197 of the Labour Relations Act affords a service provider whose contract has been terminated any basis to challenge the engagement of its former employees by another firm.

Background

[2] The applicant is a mining services company that performed specialist work for the first respondent, Eagle Creek, at Palmietfontein Mine under a service level agreement (SLA).

[3] That SLA was terminated on 1 July 2025. Eagle Creek then engaged the second respondent, Newlyn, to provide services at the mine. Newlyn concluded employment contracts with the fourth and further respondents (who I shall refer to as 'the former employees'). There are 151 such former employees.

[4] In correspondence, Eagle Creek and Newlyn described the process of concluding employment contracts with the former employees as being 'akin to' or 'in terms of' section 197 of the Labour Relations Act. However, the applicant asserts that there was no transfer of a business as a going concern. Eagle Creek and Newlyn agree. Accordingly, it is not in dispute in proceedings before this Court that section 197 does not find application.

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[5] The applicant however asserts that Eagle Creek's reliance on the language of section 197 was misleading, and that it was a guise under which Eagle Creek and Newlyn unlawfully appropriated its workforce and intellectual capital. This injures its ability to render its specialist services and causes commercial, reputational, and financial harm. It seeks orders:

5.1 declaring that 'the section 197 process' was unlawful, and setting it aside;

5.2 declaring the employment contracts concluded between Newlyn and the former employees to be 'void and unlawful'; and

5.3 that the former employees be 'declared to be employees of the applicant'.

[6] The applicant submits that the matter is urgent because the continued employment of its former staff by Newlyn threatens the survival of its business. It contends that disputes relating to section 197 transfers are in any event inherently urgent.

[7] The first and second respondents oppose the application. They argue that it is not urgent, that the applicant lacks standing to bring it, and that the Labour Court lacks jurisdiction over what is, in essence, a commercial dispute between contracting parties. They note the applicant's admission there was no transfer of a business as a going concern and that section 197 therefore does not apply. All 151 of the former employees are now employed by Newlyn and have not sought to set aside their contracts. The first and second respondents contend that the relief sought would, in effect, terminate those contracts and leave 151 working employees without jobs, contrary to the protective purpose of section 197. They further submit that the application is an abuse of process and a continuation of the applicant's efforts, following a failed High Court application, to compel Eagle Creek to maintain its commercial relationship with it.

[8] In mid-August, the applicant approached the Mahikeng High Court to challenge the termination of the SLA. That application was struck from the roll for want of urgency on 22 August 2025. The present urgent application to this Court was launched on 18 September 2025.

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<u>Cause of action and standing</u>

[9] It is common cause that section 197 of the Labour Relations Act does not apply, as there was no transfer of a business as a going concern. The 151 employees previously employed by the applicant are now employed by Newlyn, where they continue to work. The dispute therefore lies not in the existence of a section 197 transfer, but in the applicant's objection to the use of the terminology of section 197 in communications between Eagle Creek, Newlyn and the employees.

[10] The applicant nevertheless seeks declaratory orders premised on section 197. The question is whether it has standing to do so, and whether its pleadings disclose a cause of action under that provision.

[11] Section 197 is designed to protect employees when a business changes ownership. It secures continuity of employment and regulates the obligations of the old and new employers towards affected employees. It does not create any proprietary right for an employer to retain its workforce or to invalidate employment contracts concluded between its former employees and another employer.

[12] On its own version, the applicant accepts that section 197 does not apply, yet it asks the Court to declare that there was an 'unlawful transfer' and to set aside the employees' contracts with Newlyn. Such relief is inconsistent with both the text and purpose of the section, which exists to preserve employment, not to extinguish it.

[13] The employees themselves are cited as respondents, not co-applicants, and have not joined in the relief sought. The applicant is not seeking to assert employee rights, but its own commercial interests. Section 197 provides no basis for that claim. Any complaint arising from the termination of its service agreement or the loss of its workforce is a contractual or delictual matter for the civil courts, not a labour-law dispute.

[14] The same difficulty arises in relation to the applicant's allegation of misrepresentation. That allegation, too, does not confer standing. Even if some

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employees were misled into signing new contracts, the right to challenge those contracts would belong to them, not to the applicant.

[15] The application accordingly discloses no cause of action under the Labour Relations Act, and the applicant lacks locus standi to seek the relief claimed. The application falls to be dismissed on that ground alone, and it is unnecessary to consider the question of urgency.

Costs

[16] The respondents sought a costs order on the basis that the application was frivolous, commercial in character, and an abuse of process. They submitted that the applicant acted recklessly by invoking section 197 to advance a commercial dispute, and by jeopardising the employment security of 151 employees. The applicant opposed a costs order, contending that its position was bona fide and that the defences lacked merit.

[17] Section 162 of the Labour Relations Act confers a discretion on this Court to make orders for costs, according to the requirements of the law and fairness. That discretion is exercised so as to avoid discouraging litigants from approaching the Court to assert employment rights. This case, however, is brought to pursue a dispute between commercial entities, not between an employer and its employees.

[18] The application has no foundation in the Labour Relations Act and has misused valuable time on the urgent roll. While the applicant’s conduct warrants censure in costs, it does not reflect bad faith or conduct deserving of a punitive order. Fairness therefore dictates that costs should follow the result.

Order

[19] The application is dismissed.

[20] The applicant must pay the respondents’ party-and-party costs, such costs to include the fees of counsel on Scale C.

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Harvey AJ

Acting Judge of the Labour Court of South Africa

Appearances:

On behalf of the applicant: Mr B Ford and Ms N Khan instructed by Jagga & Assoc.

On behalf of the 1st and 2nd respondents: Mr M Desai instructed by Morgan Law

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