(1) Reportable Yes/No
(2) Of interest to other Judges: Yes/No
(3) Revised

Signature Date

**THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

Case No: JS26/2020

In the matter between:

**NATIONAL UNION OF METALWORKERS**

**OF SOUTH AFRICA (NUMSA)** **Applicant**

**PHALATSE AND 24 OTHER** **Second to further employees**

and

**MEGAROLLER AFRICA (PTY) LTD** **First Respondent**

**MEGAROLLER INDUSTRIES (PTY) LTD**

**(In Liquidation)** **Second Respondent**

**Heard :** **23 & 24 February 2026.**

**Delivered:** **22 May 2026.**

**This judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be 22 May 2026.**

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**JUDGMENT**

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**MALULEKE, AJ**

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Introduction

[1] The first applicant represents the second to further applicants (employees) listed on annexure "A-19". These employees filed a statement of claim that they were unfairly dismissed as a result of an alleged transfer and sale, as an ongoing concern in terms of section 197 of the Labour Relations Act (LRA). The employees allege that the dismissal was occasioned when the first respondent, Megaroller Africa (MRA), took over from their former employer, the second respondent, Megaroller Industries (MRI).

[2] The transfer is alleged to be one contemplated by section 197(1) and 197(2) of the LRA. The employees submit that the second applicant's dismissal, shortly after taking over the premises, was therefore an automatically unfair dismissal in terms of section 187(1)(g) of the LRA. Accordingly, the second to further employees seek compensation.

[3] The first respondent, MRA, filed a notice to defend and challenge the statement of claim. The second respondent is not opposing the application. It is submitted by both parties that the second respondent was liquidated after the employees were refused to resume in January 2019. At the time of filing the statement of claim, the first respondent was initially represented. At the date of trial, he was unrepresented and stated the financial inability to afford legal practitioner. The first respondent raised four preliminary issues, namely, (i) Jurisdiction, due to late filing of statement of claim; (ii) Res judicata; (iii) Lis alibi pendens; and (iv) undue delay, failure to prosecute on time.

[4] While at the time the trial was about to commence, both parties approached the court in chambers and off record. The parties at this point confirmed agreement that the respondent had abandoned all the points in limine. The respondent confirmed with reservation and wanted to engage on the reasons for abandoning the issues in chambers. However, the court refused to hear submissions in chambers and directed the respondent to raise issues of concern on record in court. However, should there be any change, the employees deserve to know the case they were facing. Initially, the trial proceeding was on 23 and 24 February 2026.

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Factual Background and common cause issues

[5] The second to further employees were employed by the second respondent, Megaroller Industries (Pty) Ltd (MRI) under the directorship of Jimmy Evans. The employees' dates of employment vary per individual. The facts in this matter are mostly common cause. Jimmy Evans was the director of MRI with almost 50 to 70 employees. At some point, Melt Malan was part of the management and supervisors team at MRI. On 8 November 2018, James Evans resigned as a Director of MRI. Then on 30 November 2018, Melt Malan was appointed and registered as the sole Director of MRI. Then MRA was also registered on the same date.

[6] On 14 December 2018, MRI closed its doors for the festive season while under the directorship of Melt Malan. Though Malan states that he was appointed solely for the purposes of assessing the viability of rescuing the MRI business. Following his assessment, he determined that the MRI cannot be rescued, but it is to be liquidated.

[7] The employees were supposed to report for duty on 8 January 2019. On 4 January 2019, Melt Malan sent SMS messages to employees. The contents of the SMS, amongst others, stated in summary that the past year was a difficult year with poor product quality and low sales volume and low prices. Due to this, the company had to close its doors permanently. The SMS further stated that there is a possibility that another company may start operating in the same premises. This will also mean that some employees will be accommodated, while some will have to negotiate individually with the new owner.

[8] On 8 January 2019, another SMS followed stating that MRI had vacated the premises at number 38 Theuns Mulder Street and further details of contact and address will follow. The MRA started operating on the same premises under the directorship of Melt Malan. In January 2019, when the company of MRI opened, it only absorbed other employees under the employment of the MRA. The 25 employees in this matter were not absorbed by MRA.

Issues in dispute

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[9] The court is called to determine whether:

9.1 Megaroller Industries (Pty) Ltd (MRI) was transferred to Megaroller Africa (Pty) Ltd (MRA) as contemplated by section 197 (1) and 197 (2) of the LRA;

9.2 MRA's failure to absorb the second to further employees constituted an automatically unfair dismissal as contemplated in terms of section 197(1)(g) of the LRA.

9.3 If so, whether such dismissal was procedurally and substantively fair.

Law and legal principles

[10] Section 197 (1) and section 197A of the LRA provides that the term "business" includes the whole or part of any business, trade, undertaking, or service. The term "transfer" means the transfer of a business by one employer to another employer as a going concern.

[11] While section 197(2) of the LRA states *inter alia* that if a transfer of a business takes place, unless otherwise agreed in terms of section 197(6), the new employer is automatically substituted in the place of the old employer in respect of all employment contracts in existence immediately before the date of the transfer.

[12] There are three elements required to be considered in determining whether the transaction fall within the ambit of section 197 of the LRA, namely (a) a transfer from one employer to another; (b) that the transferred entity must be the whole or part of a business; and (c) that the business must have been transferred as a going concern.

[13] In *National Education Health and Allied Workers Union v University of Cape Town and Others*,[1] it was said that when the nature of this transaction takes place, what is transferred must be a business in operation "*so that the business remains the same but in different hands … In deciding whether a business has been transferred as a going concern, regard must be had to the substance and not the form of the transaction*."

[1] (2003) 24 ILJ 95 (CC) at para 56 (*NEHAWU*).

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[14] In doing so, consideration should be assessing factors such as *"whether a business has been transferred as a going concern … such as the transfer or otherwise of tangible and intangible assets, whether workers are taken over by the new employer, whether customers are transferred, and whether or not the same business is being carried on my the new employer*."[2]

[15] In *Aviation Union of South Africa and Another v SA Airways (Pty) Ltd and Others,*[3] it was said that for a transfer to be established, there must be an exchange of hands. Further to that, there must be components of the original business that are passed on to the third party. *'These may be in the form of assets or the taking over of workers who were assigned to provide the service*.'

[16] In *Rural Maintenance (Pty) Ltd v Maluti-A-Phofung Local Municipality*,[4] the Labour Court (LC) confirmed that there is no need for the whole business asset to be transferred. What matters will be confirmation that after the business is transferred, the new business (MRA) will continue to service the same customers and clients that were being serviced by the former, in this instance, MRI (my emphasis).

[17] The Constitutional Court in *Rural Maintenance (Pty) Ltd and another v Maluti-A-Phofung Local Municipality,*[5] did not agree with the argument raised by the Municipality in the Labour Appeal Court (LAC),that failure to transfer certain assets by Rural will mean there was no transfer as ongoing.[6] The CC said that such an argument raised by the Municipality was not the law. It went further to state that "Indeed, the authorities make it clear that there can be a transfer of business as a going concern even in a situation where no assets have been transferred at all."[7] On those grounds, the CC endorsed the LC decision and set aside the LAC decision.[8]

<u>Submissions</u>

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[2] *NEHAWU,* fn 3 above para 56.

[3] [2012] (2) BCLR 117 (CC) (*Aviation* case) para 48

[4] [2014] ZALCJHB 180 (*Rural Maintenance* LC case) at para 29.

[5] [2017] 3 BLLR 258 (CC) (*Rural Maintenance* CC case) (at para 37.

[6] *Maluti-A-Phofung Local Municipality v Rural Maintenance Free State (Pty) Ltd* (JA79/2014) [2015] ZALAC 110 (21 October 2015).at para 24.

[7] *Rural Maintenance* CC case at para 187.

[8] *See Rural Maintenance* CC case at para 192.

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*Preliminary points*

[18] During the trial, the first respondent raised a point of res judicata and that of misjoinder. He challenged that the first respondent (MRI) was not supposed to be a party due to liquidation. Further to that, there was another related matter dealt with before in the urgent application under case number J240/19. He confirmed to have abandoned the points as a tactical concession and procedure to avoid legal costs. The employees challenged this stand on the basis that the points were abandoned. Further on, answering to the misjoinder, the employees' argument was that it was impossible to proceed with the matter in the absence of joining both parties, MRA and MRI. Therefore, there was no misjoinder.

[19] The court agrees with the applicant's submissions and rejected the respondent's purported tactical procedure defence raised as a justification for abandoning the points in limine. It is important for the employees to know what case to answer. The respondent abandoned points and only intends to revive them at the last minute, which is not accepted due to a lack of transparency and misleading the court.

[20] On the res judicata, the merits, at the hearing of the urgent application, were not dealt with. Apart from that, the first respondent was not even a party to the urgent application. While on the issue of joinder and assessing the matter following the date of resignation of Mr. Evans James, the director of MRI, the current director of the MRA became a director of the MRI up to the date of employees' closure in December 2018. Therefore, there was a case to answer from both respondents.

[21] The same director of the new registered company of the MRA and the director at the time the employees were dismissed was one and the same person representing both companies. The court found that the two respondents are the correct parties to answer to the statement of claim. In the urgent case, the second respondent was ordered to pay the employees outstanding leave pays. The ruling for both points of res judicata and misjoinder was dismissed.

<u>Employees' case</u>

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[22] The employees presented their evidence through one employee, Mr Meshack Sibanda and former MRI employee. He testified that they (employees) were employed by MRI until 14 December 2018 when the company closed for the Christmas festive season. They were supposed to have resumed on 14 January 2019. To their surprise, on 04 January 2019, the employees received an SMS with the following contents:

> "Dear Megaroller Industries Employees. 2018 has been a difficult year with poor product quality, low sales volumes and low prices which caused massive financial and customer losses. We are sorry to inform you that the company have had to close its doors for business permanently. There is the possibility of another company starting up operations. We will let all personnel know of the outcome and who can be accommodated on Tuesday 8 January 2019. Offers of employment will be negotiated with individuals directly by the new company."

[23] On 08 January 2019, the employees received further messages stating the following:

> "We are sorry to inform you that we have not received any offer of employment from the new company for your services. We also have to inform you that Mr. Bokka Potgieter, who was appointed to conclude and finalise the closing/liquidation of Megaroller Industries, have sadly passed away two weeks ago. Megaroller Industries have vacated the premises at 38 Theuns Mulder Street, and you will receive a further notification of who to contact and address details next week."

[24] To their surprise, one Ludwig Harms was said to have joined the MRA, as a production manager had a list of employees who were already absorbed by the new company. Those employees were the only ones furnished with access to the premises of MRA. Those who were absorbed also received messages, except for him and other 24 employees ("A-19" list).

[25] After those messages, he was invited to the meeting which was held on 14 January 2019. He attended on behalf of the other 24 employees because they were not permitted to the meeting. The respondent witness, Mr. Malan, was part of the people who were in the meeting, including Mr. Van Rooyen. In this meeting, Mr. Malan was asked as to who the new employer was to operate.

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[26] Mr. Malan responded that he did not know the new company since it was not yet registered, which was not correct because it was later discovered that the MRA was registered before their dismissals in November 2019. The employees shortly thereafter engaged Mr. Malan through the offices of the first applicant, NUMSA, and enquired about the same question. The employees were informed that MRI shut down on 18 December 2018 and there was no plan afoot.

[27] Again on 17 January 2019, the witness, Mr. Malan, confirmed that the new company was yet to be registered, which was not correct. Because the MRA by then was already registered. Even after the resignation of Mr. Evans, on 17 and 21 December 2018, Mr. Malan addressed a letter to the MRI director while he was the Director. To the employees, such action did not make logical sense as to in which capacity he was sharing such correspondence.

[28] The witness confirmed that the new company, MRA, operates on the same premises as that of the MRI. The new company, MRA, produces the Megaroller branded rollers. He further stated that MRA uses the machinery of the MRI. MRA also uses the same patent technology and website as the one of MRI, the previous employer. He also confirmed that MRA also uses the same supplier as the MRI. The witness confirmed that there were some customers whom he was not aware were at MRI before. But when he assessed the records from the website, he confirmed that MRA also sells to the same customers as those of the MRI.

[29] Though under cross-examination, he conceded that there were times the company MRI intended to retrench, it never proceeded with such retrenchments. The employees were only dismissed by way of SMS on 4 and 8 January 2019. When the company of MRA took over the premises, employees' contracts of employment were not transferred from MRI to MRA. The employees were also not afforded the opportunity to apply to the new company of MRA. The taking over of MRI by MRA was a clear transfer as contemplated in section 197.

<u>Respondent's Case</u>

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[30] The Respondent, MRA, was represented by its director, Mr Melt Malan. That indeed he was appointed as the sole director of the MRI for the purposes of facilitating the possibility of rescuing the business from the liquidation process. The MRA company business was registered on 30 November 2018. The witness confirmed that the MRI company was liquidated on 22 October 2019. Though MRA is operating in the same premises, it has its separate lease agreement.

[31] The MRI was not transferred to MRA as an ongoing concern because MRI was trading insolvent and it was liquidated. Besides, there was nothing to transfer due to the fact that the building he is leasing from was owned by a third party, not MRI. The same applied to the manufacturing equipment. He submitted that there was an urgent application launched by the same applicant against the second respondent, MRI. That the urgent court order settled the dispute, and parties agreed on certain outstanding payments.

[32] Although he was not a party to the urgent application, he was the one who also paid the employees. Therefore, that urgency brought the dispute to finality, hence res judicata was raised. Otherwise, he should not have been brought to the current litigation. More so because, the MRA only took over 20% because he wanted to continue only on HDPE rollers and not the steel rollers. The 20% is on a much smaller scale and was just for his startup. At the time this process was to be managed, through a franchise agreement with Megaroller International.

[33] Under cross-examination, he conceded that the franchise could not be finalised in writing; however, that does not invalidate such an agreement. Both the MRA and the Megaroller International (Pty) Ltd were juristic entities; therefore, the employees' argument that the Consumer Protection Act (CPA) should not be applicable. Further, the MRA concluded the lease of premises and machinery on 09 January 2019. He also conceded that he used the website of MRI because setting up a new website was costly for him, but that did not mean there was a transfer.

<u>Analysis of submissions</u>

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[34] From the parties' submissions, it is clear that the director of the new company, MRA, is the same director who was managing MRI at the time the employees were not absorbed. Finally, while Mr. Malan admits that he was managing director of MRI at some point, he justifies such by stating it was solely for him to facilitate the rescue process and to avoid liquidation of the first respondent, if need be. He disputes that MRA is operated and controlled in the same way that MRI was.

[35] Mr. Malan conceded to having taken over 20% as a startup from MRI, yet disputes that it was based on transfer because MRI was liquidated. Further, the transfer as an ongoing concern cannot take place when the core assets belong to the third party. The court is unable to get to the core of the business in the absence of the respondent demonstrating what the core business and 20% were comprised of. Evidence was led on the takeover, that some employees of the MRI were absorbed by MRA, which is not in dispute.

[36] Section 197 (1) of the LRA provides that ‘the term "business" includes the whole or part of any business, trade, undertaking, or service. The term “transfer” means the transfer of a business by one employer to another employer as a going concern.

[37] In the *Aviation case*, it was correctly settled that further consideration should be had with regard to the components of the original business being transferred to the new owners. The new owner, MRA, took some employees and continued with them to operate as they were in the previous business. This was one element amongst others of the transfer.

[38] Based on submitted oral evidence and both MRI and MRA business of company registrations, customers, and products of both companies, it was evident that the three elements of transfer in terms of section 197 exist. The Court acknowledged MRA's submission that it did, in fact, occupy the same space that was previously occupied by MRI, albeit under a separate lease agreement. In addition to the respondent’s submission was the fact that certain aspects of the MRI business, including vehicles and equipment, were not transferred, as they belong to the third parties. When the MRI terms or

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agreement with those parties were over, the MRA concluded its separate agreement with the same third parties owning manufacturing machinery.

[39] Nevertheless, the court is persuaded by the applicant's presented evidence and confirms that there was a transfer of business from MRI to MRA as an ongoing concern, despite the fact that it was not whole. This is clearly a seamless transfer, whether in its entirety or in part. The MRA continues to operate with the same customers, machinery, website which carries the goodwill of the MRI, and same premises as that of the MRI.

[40] That MRI was liquidated was not in dispute. However, it is worth noting the period of its liquidation was way after the employees were refused their contract of employment. Therefore, this cannot be a defence for the first respondent. Doing so triggers an inference to be drawn that the respondent could be raising this because the MRI and MRA were being managed by one and the same director at the time the employees were not accepted back to work. Otherwise, apart from that, the first respondent cannot argue for the second respondent, who elected not to defend the statement of claim.

[41] The argument about MRA having a franchise cannot be taken further, since the respondent's witness Mr. Melt Malan conceded that there is no written agreement to confirm the franchise, however, that does not mean it was invalid. There was no persuasive evidence for one to conclude that indeed there was a franchise. The court accepts the submission by the applicant that the franchise should be interpreted as envisioned in the CPA. Therefore, the court rejects the respondent's reliance on a franchise that was never in place.

[42] In the *NEHAWU* case, it is established law that an operational business must be transferred when the transaction occurs, ensuring continuity of the business under different ownership. The MRI and MRA businesses remained in both operation at the time employees were dismissed and when the new ownership took over. The substance of this transaction is what matters most. From the court's assessment of evidence, the only thing different is the change of name. The overall evidence points at the director of the MRA, the new owner, as being the one who seems to be continuing in the shoes of the old employer, MRI. Therefore, the form of transfer is immaterial for this court to focus on as per the case referred to earlier.

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[43] The MRI business never ceased operating until the MRA took over on 8 November 2018 when Jimmy Evans resigned. Also, at the time, Mr Malan was appointed as director of MRI on 8 November 2018. While MRA was registered on 30 November 2018, the MRI was still an employer of the employees under the directorship of Mr Malan.

[44] In both cases of Rural Maintenance, it was confirmed that for the business transfer transaction to take place, there was no requirement that all assets were to be transferred to the new business. When turning to assess factors listed and recited in the Rural case, the following factors were identified in the present case:

(a) "There was concession of transfer of certain assets from MRI to MRA, be tangible and intangible

(b) There was concession that some workers were or have been taken over by the new employer (MRA)

(c) There was confirmation that some of the MRI customers were being serviced by the MRA, the new employer.

(d) There was concession that 20% of the business was carried over.

(e) Lastly, there was concession that the previous employer's goodwill through the websites was carried over without alteration to the website.

(f) The respondent, the (MRA), confirmed to have carried certain responsibilities of employees including some applicants in this case, among others, like payment of their leave pay."

[45] This court find that similar act occurred in this case. It is worth noting, as earlier stated that, Mr Malan was the sole director of MRI. Even at the time employees were dismissed. Including at the time MRA was registered , with him still the director, is a clear indication of a seamless transition.

[46] His concession that a website for MRA was not created because it was costly, he just took the website of MRI as it is. This occurred because there was such a transfer, and MRA needed to maintain the goodwill of the MRI.

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Though it appeared seamless, and it cannot be shied away from to state that, also the owners are still the same. What worries more, Mr. Malan also misled the internal process at the time when the employees sought clarity as to when the new company was going to be registered. This occurred more than once, at the time employees sought clarity through the meeting of 14 January and correspondence of 17 January 2019. Again, the respondent refused to disclose also in the pleading.

[47] At this juncture, Mr Malan informed the employees that he had no knowledge, yet he was the owner and director of the new company. Not only that, he was aware of the registration of 30 November 2018 as a director. For concealing this information from employees whose employment and right to fair labour practices were at stake, was not fair. The court finds that Mr Malan was not a credible witness, he demonstrated conduct of not caring about these employees.

[48] With the evidence presented before this court, the court finds that the director and owners of MRI and those of MRA are one and the same person. Even if this court may be wrong to arrive at this conclusion, the MRA, in taking over the premises, having admitted that the website was a carbon copy of MRI's with the same suppliers, same products, and same customers and in taking over 20% and some employees of the MRI without terminating those employees' contracts, was a clear indirect concession of a section 197 (1) process.

[49] Though the respondent argues his taking over of 20% was just as the start-up of the MRA business. There was no transfer because the manufacturing machinery, patents, and trademarks were owned by third parties not MRI. That the respondent concluded new agreements to proceed. The court finds it difficult to accept these submissions in the absence of the third parties' evidence and their confirmation to this effect. The court is satisfied that the same business is being carried over. The MRI business was transferred to MRA as contemplated in terms of section 197 (1) of the LRA. Therefore, the consequences of section 197(2) must apply.

<u>Relief</u>

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[50] Having found that there was a transfer in terms of section 197(1), therefore, the consequences of section 197(2) are to apply. One of the consequences of section 197(2) is that the transfer does not interrupt the employees' continuity of employment; employees' contracts of employment should continue with the new employer as if with the old employer. In the absence of a written agreement, the court finds that the first respondent is still the employer of the employees in this matter. At the time the employees' contracts were terminated, their contracts were still in existence.

[51] The employees sought confirmation that the business was a sale and transfer as an ongoing concern. Their dismissal was both procedurally and substantively unfair. Therefore, they seek restitution or, in the alternative, compensation. While the respondent argues for the dismissal of the employees’ claim, stating that it was finalised by the urgent court under case number J240/19 against the second respondent. That he even paid these employees the outstanding payments as per the urgent court’s order, therefore the applicants’ claim should be dismissed with costs.

[52] This court is unable to deal with the facts that transpired on the urgent application, more so the second respondent did not oppose this case to argue his position. More so, the first respondent was not a party to the urgent application case. The liquidator was also not precluded from filing a report or papers to explain the second respondent’s status.

[53] The respondent further requested the court to grant an order in the alternative that it be held that the employees were dismissed based on operational requirements. In this case, there was no operational requirements process that was embarked upon by the previous or new employer. There was no argument or evidence presented in court related to this process. However, the provision of section 197(8) reads as follows:

“(8) For a period of 12 months after the date of the transfer, the old employer is jointly and severally liable with the new employer to any employee who becomes entitled to receive a payment contemplated in subsection (7)(a) as a result of the employee’s dismissal for a reason relating to the employer’s operational requirements or the employer’s liquidation or sequestration,

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unless the old employer is able to show that it has complied with the provisions of this section."

[54] In the Rural Maintenance CC case, the provision of section 197(7) was reiterated by stating the options the Municipality had at the time and said that "Another way for an employer in the Municipality's position to limit its financial obligations arising from a transfer of a business as a going concern is provided for in section 197(7) that there must be a written agreement on the payments and contracts of the employees.

[55] The old employer, the second respondent, elected not to oppose this case. There is no evidence or written agreement that was presented to demonstrate that the new employer, MRA, is to be exonerated from any liability and obligation of these employees. Therefore, neither the MRI nor the MRA was entitled to terminate the employment contract services of these employees prior to the transfer, especially if their dismissal was related thereto.

[56] Section 187(1)(g) of the LRA provides that a dismissal is automatically unfair if the reason for the dismissal is the transfer, or a reason related to the transfer, contemplated in sections 197 or 197A. The court finds that this provision is strongly applicable to these employees due to the fact that their dismissal was occasioned by the transfer of business from the MRI company to the MRA company. The messages from the respondent that were shared with employees dated 4 and 8 January 2019 constituted a dismissal within the purview of section 197(1)(g) of the LRA.

[57] All the steps and actions taken by the respondent, including payments of the leave amounts, were confirmation that this respondent, the MRA, had already stepped into the shoes of the MRI even before this court order. An inference can be drawn that this could be so because both companies' directors at the time of employees' dismissals and the date of urgent application are the same as those of the responsible management directors of the MRI and MRA, which is Mr. Melt Malan.

<u>Legal Costs</u>

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[58] Section 197 as correctly decided as settled in the *NEHAWU* case, "*aims at minimising the tension and the resultant labour disputes that often arise from the sales of a business and impact negatively on economic development and labour peace. In this sense, section 197 has a dual purpose, it facilitates the commercial transactions while at the same time protecting the workers against unfair job losses*[9]." This was an opportunity for the respondent to engage the employees, yet he failed to follow the required procedure in terminating the employees contracts of employment.

[59] To this end, the appropriate order to make is that the first respondent is to pay 50% of the applicant's legal costs. The court is fully aware that in *Zungu v Premier of the Province of KwaZulu-Natal and Others,*[10] the Constitutional Court confirmed that the rule of practice that costs follow the result does not apply in labour matters. The Court should seek to strike a fair balance between unduly discouraging parties from approaching the Labour Court to have their disputes dealt with and, on the other hand, allowing those parties to bring to this Court cases that should not have been brought to Court in the first place. However, the court is of the view that a slight departure is applicable in this case and based on the grounds stated below.

[60] The respondent was the director and stepped in the shoes of the employer as of 30 November 2018 and when the company closed for Christmas on 14 December 2018. He is the sender of all the correspondences of 04 and 08 January 2019, related to the former and the new employers' operations and updates to the employees of possible terminations and the new employer coming over. The alleged valid franchise agreement was not proven, nor was there evidence that it was ever intended to exist or existed.

[61] As early as 30 November 2018, when the MRA was registered , he was aware of who would be taking over yet failed to disclose it to the employees, despite having been requested to do so. However, he continued to issue a memorandum that the new company was still to be registered, yet he was aware that the MRA, which he is a director to, was himself.

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[9] *NEHAWU* (id fn 3) at para 53.
[10] (2018) 39 ILJ 523 (CC) at para 24.

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[62] It was evident from presented evidence that he was aware at the time of registering the MRA and loading website of the MRA, that it was using exactly the same website to that of the MRI website. Yet he still claimed not to know the new company. At the time the employees sought clarity, he was aware that he is operating 20% of the MRI products and customers and as per his admission to this percentage, yet he concealed information, despite having requested so.

[63] Throughout all relevant periods, including the filing of the statement of claim and up to the date of trial setting, he should have proactively engaged with the employees to facilitate equitable fair separation or termination procedures, but he neglected to do so. The respondent's persistence in presenting previously abandoned points *in limine*, as well as the misjoinder argument, was evidently misleading because he was aware of him being the director of MRA and that in December 2018, he was still the sole director of MRI.

[64] The respondent MRA's argument that he had already paid specific amounts in accordance with the urgent court order of JS240/19, which included leave payments, was acknowledged by the court. However, the court determines that such an amount was not a fact in this case, therefore, it was a separate transaction from the current case. The urgent application of the first respondent (MRI) was not even an interlocutory to this case. There were no arguments regarding the precise figures paid to each employee by the second respondent that were presented to this court.

[65] Therefore, the employees have succeeded in this court. There is no reason why the employees should not be awarded costs in these proceedings.

[66] In the premises, the following order is made:

<u>Order</u>

1. The legal points raised by the respondent are dismissed.

2. The applicants succeeded in proving that there was a transfer in terms of section 197 of the LRA that took place between the first and the second respondents.

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3. The first and second respondents' refusal to absorb and to consider transferring the second to further employees' ("A-19" employees list) contracts of employment from MRI to MRA companies constituted a dismissal as per section 187(1)(g) of the LRA.

4. Therefore, the employees' dismissals were both procedurally and substantively unfair.

5. The respondents are to reinstate the affected employees (Phalatse and 24 others, as per annexure A-19 list) with effect from 01 June 2026. Their contracts of employment are to be transferred from the second respondent (MRI) to the first respondent (MRA) in terms of s197 (2) of the LRA.

6. The first respondent shall pay 50% of the employees' costs on a party-and-party scale "A"

Z. D. Maluleke

Acting Judge of the Labour Court of South Africa

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Appearances:

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|---|---|
| For the Applicant: | Adv C Orr SC |
| Instructed by: | Ngako Attorneys |
| For the First Respondents: | Mr. Melt Malan, in person |

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