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EMPLOYMENT

Corporate musical chairs: Section 197 doesn't fall for a change of name

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The Labour Court's recent judgment in *National Union of Metalworkers of SA & others v Megaroller Africa (Pty) Ltd & another* (2026) 47 ILJ 2550 (LC) serves as a reminder that, when determining whether a business has transferred as a going concern, the courts will look beyond the corporate structure and contractual arrangements to establish what has actually happened to the business. Importantly, the judgment also confirms that a transfer need not involve the entirety of a business, nor must the assets used in conducting that business necessarily be owned by the transferring employer.

Megaroller Industries (MRI) operated a manufacturing business employing approximately 50 to 70 employees. During November 2018, its director resigned and was replaced by Mr Malan, who had previously been involved in its management. On the same day that Malan became MRI's sole director, a new company, Megaroller Africa (MRA), was registered, also under his directorship. MRI closed for the December holidays. However, shortly before employees were due to return in January 2019, they received SMS notifications advising that MRI had permanently ceased trading and that another company might commence operations from the

same premises. Some employees were subsequently offered employment by MRA. However, 25 employees were excluded. Those employees approached the Labour Court, contending that MRI's business had transferred to MRA as a going concern under section 197 of the Labour Relations Act (LRA), and that their exclusion constituted an automatically unfair dismissal under section 187(1)(g).

MRA disputed that any transfer had occurred. It argued that MRI was insolvent and had subsequently been liquidated. Furthermore, MRA maintained that it had only taken over approximately 20% of MRI's operations, concentrating on a particular product line. MRA also emphasised that neither the manufacturing premises nor the equipment belonged to MRI. Instead, these assets were owned by third parties, with MRA having concluded its own leasing arrangements.

The Labour Court was not persuaded. The evidence established that MRA operated from the same premises, utilised the same manufacturing equipment, produced the same branded products, serviced some of the same customers and employed some of MRI's former employees. Significantly, MRA had also continued using MRI's website, thereby benefiting from its established goodwill. The Court reiterated that section 197 requires an assessment of the substance rather than the form of a transaction. The critical question is whether an identifiable business, or part of that business, has continued operating in different hands. The fact that MRA had taken over only a portion of MRI's operations was not decisive. Section 197 expressly contemplates the transfer of part of a business. Similarly, the absence of a transfer of ownership of physical assets did not prevent section 197 from applying. What mattered was the continuity of the business operations, not the legal ownership of the equipment used to conduct them. MRI's subsequent liquidation was equally unhelpful to MRA, particularly because it occurred several months after the new business commenced operating.

Having found that a transfer had occurred, the Court concluded that the affected employees' contracts should automatically have transferred to MRA. The decision to exclude the 25 employees therefore constituted dismissals related to the transfer, rendering them automatically unfair under section 187(1)(g) of the LRA. The Court ordered their reinstatement with effect from 1 June 2026, the transfer of their employment contracts to MRA and payment by MRA of 50% of the employees' legal costs.

The judgment does not mean that every new business operating from the same premises, using similar equipment or servicing former customers, will necessarily trigger section 197. The enquiry remains fact-specific and requires consideration of the business as a whole. However, employers contemplating restructuring, acquiring selected business operations or establishing replacement entities must carefully assess whether the proposed arrangements amount to the transfer of an identifiable economic undertaking. Where section 197 applies, the transfer of employment contracts occurs automatically by operation of law. The incoming employer cannot simply select which employees it wishes to retain.

This does not prevent genuine operational restructuring or retrenchments where justified. However, those processes must comply with the LRA and cannot be used merely to avoid the consequences of a business transfer. Ultimately, a new company registration may create a new legal entity, but it does not necessarily create a new business for purposes of section 197.



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