CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 15/25

In the matter between:

KING CETSHWAYO DISTRICT MUNICIPALITY	Applicant
and	
WATER AND SANITATION SERVICES SOUTH AFRICA (PTY) LIMITED	First Respondent
MUNICIPAL AND ALLIED TRADE UNION OF SOUTH AFRICA	Second Respondent
SOUTH AFRICAN MUNICIPAL WORKERS' UNION	Third Respondent
EMPLOYEES LISTED IN ANNEXURE "A" TO THE NOTICE OF MOTION	4th to 666th Respondents
UMGENI WATER	667th Respondent

Neutral citation:	*King Cetshwayo District Municipality v Water and Sanitation Services South Africa (Pty) Ltd and Others* [2026] ZACC 14
Coram:	Kollapen J, Majiedt J, Mathopo J, Mhlantla J, Musi AJ, Savage AJ, Theron J and Tshiqi J
Judgment:	Majiedt J (unanimous)
Heard on:	18 November 2025
Decided on:	22 April 2026

Summary: Labour Relations Act 66 of 1995 — section 197 — transfer of business as a going concern — leave to appeal — interests of justice

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ORDER

On application for leave to appeal from the Labour Appeal Court:

Leave to appeal is refused with costs, including the costs of two counsel.

JUDGMENT

MAJIEDT J (Kollapen J, Mathopo J, Mhlantla J, Musi AJ, Savage AJ, Theron J and Tshiqi J concurring):

[1] This is an application for leave to appeal the whole judgment and order handed down by the Labour Appeal Court on 10 January 2025, which dismissed the applicant's appeal against the judgment of the Labour Court delivered on 3 September 2020. In that judgment, the Labour Court declared that the provisions of section 197 of the Labour Relations Act[1] (LRA) were triggered upon the non-renewal or termination of a service level agreement (SLA) entered into between the applicant, the King Cetshwayo District Municipality (Municipality), and the first respondent, Water and Sanitation Services South Africa (Pty) Ltd (WSSA).

[2] The applicant is a local government entity, a district municipality constituted in terms of the Local Government: Municipal Structures Act.[2] The first respondent, WSSA, is a private company with limited liability duly incorporated and registered

[1] 66 of 1995.

[2] 117 of 1998.

according to the company laws of the Republic of South Africa. WSSA forms part of the holding group Mea Aqua, a Luxembourg-based company. The second respondent is the Municipal and Allied Trade Union of South Africa, a trade union registered in accordance with sections 95 and 96 of the LRA. The third respondent is the South African Municipal Workers' Union, a similarly registered trade union.

[3] The fourth to 666th respondents are the employees listed in annexure A to the notice of motion, who are alleged to have been employed by WSSA as at 30 June 2020 in rendering services to the Municipality. The 667th respondent is Umgeni Water, a state-owned entity involved, amongst others, in water management. Only WSSA participated in the proceedings in this Court and in the two preceding courts.

[4] In 2003, the Municipality entered into an SLA with WSSA in terms of which WSSA would provide various services related to the supply of water to the residents of the Municipality. This SLA was to terminate on 30 June 2008, but was extended to 30 June 2012. Thereafter the Municipality and WSSA concluded a second SLA. On 12 September 2013, the Municipality and WSSA concluded a third SLA. Although the third SLA was to expire on 30 June 2015, the Municipality periodically extended it.

[5] In terms of the third SLA, WSSA provided four categories of services in supplying water: namely, operational, maintenance, monitoring and general asset management services. On 12 September 2013, the parties agreed that WSSA would also set up and manage a call centre on behalf of the Municipality.

[6] In November 2019, the Municipality advised WSSA that the latest extension of the SLA would terminate on 31 January 2020. Notwithstanding this, the Municipality extended the SLA with WSSA to 30 June 2020, at which point the SLA was terminated. The Municipality avers that Umgeni Water then took over these services on an interim basis, an allegation strongly denied by Umgeni Water. This dispute is not relevant to the issues before us.

[7] In terms of the SLA, WSSA was granted the right to use the Municipality's infrastructure, comprising four of the Municipality's fixed assets, when performing its contractual duties while simultaneously being responsible for providing a variety of its own assets, tools, software and employees. These municipal assets are municipal boreholes, its water treatment facility, pumps and pipes which are linked to and transport water retained in reservoirs. Upon non-renewal of the SLA in 2020, WSSA's right to use the Municipality's fixed assets terminated. It is common cause that WSSA was granted non-exclusive access or right to use these fixed assets during the contract term.

[8] Upon conclusion of its last SLA with the Municipality, as recorded by WSSA, the latter was obliged to perform the following five services:

(a) Operational services, with WSSA assuming the function of operating the Municipality's water and wastewater infrastructure, which involve "water treatment, water distribution and storage, wastewater treatment, and water conservation and water demand management".

(b) Maintenance services, which involve "maintaining plant, equipment and associated infrastructure".

(c) Monitoring services, which involve "the efficient management and monitoring of the infrastructure to ensure uninterrupted service" and include "ensuring that the mechanical and electrical plant and equipment operate properly, as well as conducting laboratory analysis of water and effluent to ensure water quality".

(d) General asset management services.

(e) From September 2013, provision and operation of a call centre on a turnkey basis, operated by WSSA employees using WSSA assets.

[9] WSSA was responsible for providing its own workforce. It was also responsible for providing its own or leased tools, facilities and equipment such as vehicles which transported teams into the field to perform services; office space; workshop facilities; laboratory equipment to monitor and ensure water quality; and computers and office

equipment in order to manage the logistics involved in the provision of the operations and maintenance services. WSSA employed 666 employees to perform the services it was contractually obliged to fulfil, of which 591 employees were deployed in the operational and maintenance services.

[10] Importantly, before the final extension of the tender to 30 June 2020, WSSA raised concerns with the Municipality about section 197 of the LRA,[3] claiming this provision required the transfer of 666 employees to the Municipality upon the termination of the SLA. WSSA also took the view, which it conveyed to the Municipality, that in terms of clause 2.2.3.2.1 of the third tender's SLA, if the employees were not transferred to the Municipality, then they should be transferred to the new service provider. The Municipality, however, saw matters differently and disputed the section 197 transfer, arguing that WSSA was attempting to avoid its financial obligations by transferring the employees to it instead of undertaking a retrenchment process.

[3] Section 197 reads:

> "(1) In this section and in section 197A—
>
> (a) 'business' includes the whole or a part of any business, trade, undertaking or service; and
>
> (b) 'transfer' means the transfer of a business by one employer ('the old employer') to another employer ('the new employer') as a going concern.
>
> (2) If a transfer of a business takes place, unless otherwise agreed in terms of subsection (6)—
>
> (a) the new employer is automatically substituted in the place of the old employer in respect of all contracts of employment in existence immediately before the date of transfer;
>
> (b) all the rights and obligations between the old employer and an *employee* at the time of the transfer continue in force as if they had been rights and obligations between the new employer and the *employee*;
>
> (c) anything done before the transfer by or in relation to the old employer, including the *dismissal* of an employee or the commission of an unfair labour practice or act of unfair discrimination, is considered to have been done by or in relation to the new employer; and
>
> (d) the transfer does not interrupt an *employee's* continuity of employment, and an *employee's* contract of employment continues with the new employer as if with the old employer." (Emphasis in original.)

[11] As a result of these divergent views, WSSA approached the Labour Court on an urgent basis for a declarator that the termination of the SLA and subsequent insourcing of the services by the Municipality triggered the provisions of section 197 together with its legal consequences. The urgent application was set down for hearing on 6 August 2020. On 3 September 2020, the Labour Court granted an order in favour of WSSA. The Labour Court declared that the termination of the SLA concluded between WSSA and the Municipality constituted a transfer in terms of section 197 of the LRA. It further declared that the contracts of employment of the employees were transferred to the Municipality in terms of section 197(2) with effect from 1 July 2020, and that all rights and obligations between the first respondent and the employees continued in force as if they had been rights and obligations between the Municipality and such employees.

[12] On 14 January 2021, the Labour Court granted the Municipality leave to appeal its judgment and order. On 5 March 2024, the Labour Appeal Court heard the merits of the appeal. The main issue before the Labour Appeal Court was whether the return of assets owned by the Municipality to it by WSSA constituted a transfer for the purposes of section 197. The secondary issue was whether, assuming the return of assets did amount to a transfer, all the necessary assets were, in fact, returned, as it was common cause that WSSA did not return its own assets which it had used in providing the bulk water services. This latter consideration related to whether the retained assets were core assets required for the provision of bulk water services.

[13] The Labour Appeal Court held that the Labour Court correctly found that the assets did not change the fact that one sees the same business but in different hands. Thus, the Labour Appeal Court held, the requirements for a section 197 transfer to the Municipality were met and there was a transfer of the business as a going concern from WSSA to the Municipality. The Labour Appeal Court concluded that section 197 was clearly implicated as the business of providing bulk water supply was transferred to the Municipality when the service agreement was terminated. Accordingly, the Labour Appeal Court dismissed the appeal, and made no order as to costs.

[14] The central issue on appeal is whether the Labour Court and Labour Appeal Court were correct in concluding that the termination of the SLA, pursuant to which WSSA rendered bulk water services to the Municipality, constitutes a transfer of the whole or part of the undertaking or services provided to the Municipality as contemplated in section 197 of the LRA. That, in turn, requires a determination whether the well-established three-part test under section 197 has been met:

(a) that there is a business or service;

(b) which has been transferred from one employer to another; and

(c) the transfer occurred as a "going concern".

But before we get there, jurisdiction and leave to appeal bear consideration.

[15] This Court is clothed with jurisdiction only in certain circumscribed instances. They are constitutional issues (constitutional jurisdiction) and where a matter raises an arguable point of law of general public importance which ought to be considered by this Court (general jurisdiction).[4] The Municipality argues that this case engages our jurisdiction because it concerns the proper interpretation and application of section 197 of the LRA, a statute enacted to give effect to the constitutional right to fair labour practices.[5] It contends that the prospective appeal raises issues of constitutional importance, including whether a service provider's use of municipal infrastructure forms part of the "business" capable of transfer under section 197, whether the Labour Appeal Court introduced a novel or incorrect test for determining "going concern" and whether the established jurisprudence in *NEHAWU*,[6] *Aviation Union*[7] and *Tasima*[8] has been properly applied.

[4] Section 167(3)(b)(i) and (ii) of the Constitution.

[5] Section 23 of the Constitution.

[6] *National Education Health and Allied Workers Union v University of Cape Town* [2002] ZACC 27; 2003 (2) BCLR 154; 2003 (3) SA 1 (CC); (2003) 24 ILJ 95 (CC).

[7] *Aviation Union of South Africa v South African Airways (Pty) Ltd* [2011] ZACC 31; (2011) 32 ILJ 2861 (CC); 2012 (1) SA 321 (CC); 2012 (2) BCLR 117 (CC); [2012] 3 BLLR 211 (CC).

[8] *Road Traffic Management Corporation v Tasima (Pty) Ltd* [2020] ZACC 21; 2020 (10) BCLR 1227 (CC); [2020] 12 BLLR 1173 (CC); (2020) 41 ILJ 2349 (CC); 2021 (1) SA 589 (CC).

[16] The Municipality submits further that the issues transcend these parties because changes of service providers are common across the public and private sectors, and that this matter therefore presents an, as yet, undecided question warranting this Court's intervention. In addition, the Municipality contends that there are reasonable prospects of success because both the Labour Court and the Labour Appeal Court failed to accord proper weight to key facts and allegedly misapplied the legal test for a transfer of a business as a going concern. It argues that those Courts erred by treating municipal fixed assets as if they formed part of WSSA's business, and by concluding that the return of those assets constituted a transfer for purposes of section 197.

[17] As part of its contentions regarding jurisdiction, the Municipality states that our jurisdiction is engaged because the Labour Court and the Labour Appeal Court misapplied established legal principles. That stance was persisted with, even in the face of searching questions at the hearing where it was pointed out that our well-settled jurisprudence points the other way. This submission can be disposed of forthwith. This Court has on a number of occasions held that the misapplication of settled legal principles does not engage this Court's constitutional or general jurisdiction.[9] It will also not decide pure factual issues or the incorrect application of the law by lower courts.[10]

[18] WSSA, on the other hand, disputes that there are any prospects of success in this matter, and contends that the matter does not fall within this Court's jurisdiction. Self-evidently, not every matter that touches on the interpretation of a statutory provision will engage this Court's jurisdiction. That axiom applies to section 197 as well. There have been a number of judgments of this Court which considered the meaning and ambit of that section.[11]

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[9] U*niversity of Johannesburg v Auckland Park Theological Seminary* [2021] ZACC 13; 2021 (6) SA 1 (CC); 2021 (8) BCLR 807 (CC) at para 49.

[10] *Mankayi v AngloGold Ashanti Ltd* [2011] ZACC 3; 2011 (3) SA 237 (CC); 2011 (5) BCLR 453 (CC); [2011] 6 BLLR 527 (CC); (2011) 32 ILJ 545 (CC) at para 12.

[11] See *NEHAWU* above n 6; *CUSA v Tao Ying Metal Industries* [2008] ZACC 15; (2008) 29 ILJ 2461 (CC); [2009] 1 BLLR 1 (CC); 2009 (1) BCLR 1 (CC); 2009 (2) SA 204 (CC) (*CUSA*); *Aviation Union* above n 7; *City Power (Pty) Ltd v Grinpal Energy Management Services (Pty) Ltd* [2015] ZACC 8; 2015 (6) BCLR 660 (CC);

[19] This Court's jurisprudence in relation to jurisdiction in labour matters is well-settled. Generally speaking, disputes about labour rights will often implicate section 23 of the Constitution. *NEHAWU* made plain that the interpretation of a provision of the LRA will almost always engage this Court's constitutional jurisdiction. This Court held:

> "What must be stressed here is the point already made, namely that we are dealing with a statute enacted to give effect to section 23 of the Constitution and, as such, it must be purposively construed. If the effect of this requirement is that this Court will have jurisdiction in all labour matters that is a consequence of our constitutional democracy."[12]

[20] In *NEHAWU*, this Court made a clear distinction between (a) whether a constitutional issue is raised (jurisdiction) and (b) whether it is in the interests of justice to grant leave (discretion). This Court stated that the decision to grant or refuse leave is a discretion based on the interests of justice, and it identifies prospects of success and the importance of the constitutional questions for labour jurisprudence as central factors. It stresses that, although all labour matters are under "constitutional control" in a constitutional democracy, this does not mean that every labour dispute should reach this Court; rather, labour appeals will usually only be entertained where they raise questions of principle about the interpretation or constitutionality of the LRA or the scope of constitutional labour rights, not mere misapplication of settled rules to facts. That is an interests of justice consideration which performs an important gatekeeping function – this Court will not become a general labour appeal court merely because the LRA is implicated.

[21] This Court in *NEWAHU* explained the principle thus:

[2015] 8 BLLR 757 (CC); (2015) 36 ILJ 1423 (CC); *Rural Maintenance (Pty) Ltd v Maluti-A-Phofung Local Municipality* [2016] ZACC 37; 2017 (1) BCLR 64 (CC); [2017] 3 BLLR 258 (CC); (2017) 38 ILJ 295 (CC) (*Rural Maintenance*); and *Tasima* above n 8.

[12] *NEHAWU* id at para 16.

> "In the first place, this is the first occasion on which this Court has had to consider and define the approach it will take to the interpretation of a provision which is part of legislation aimed at giving effect to a constitutional right. We have held in this judgment that the correct approach is one in which the Legislature and the Courts have a tandem duty to give full effect to the Constitution. And it is necessary for this Court to apply this approach in the present matter. Secondly, the application affects some 267 workers who have lost their employment. And, thirdly, the application also raises important questions in relation to appeals from the Labour Appeal Court, in particular, whether such appeals lie to the Supreme Court of Appeal, the procedure to be followed from the Labour Appeal Court to this Court, and the circumstances when this Court will hear such appeals."[13]

[22] Later, in *CUSA*,[14] this Court found it to be in the interests of justice to grant leave because the case raised important and systemic constitutional questions about the respective jurisdictional roles of the Commission for Conciliation, Mediation and Arbitration commissioners and the courts in resolving labour disputes and reviewing arbitral awards. This Court noted that these issues went well beyond the facts of the particular exemption dispute: they implicated the structure of collective bargaining, the enforcement of bargaining council agreements and the constitutional rights in sections 23(1) and 23(5). This Court emphasised that compliance with collective agreements is central to industrial peace, the rule of law and the protection of workers who cannot individually bargain over wages and conditions. The matter thus had significant public-interest dimensions, affecting not only the employer and 250 workers but the broader integrity of collective bargaining mechanisms and labour dispute resolution.

[23] In addition, this Court noted that credible judicial disagreement in the Labour Appeal Court and the Supreme Court of Appeal indicated real prospects of success, reinforcing the need for this Court to clarify the governing legal principles. Those

[13] Id at para 28.

[14] *CUSA* above n 11.

prospects, combined with the importance and systemic reach of the issues, justified the conclusion that the interests of justice favoured granting leave to appeal. It held:

> "The question whether leave to appeal should be granted depends on whether: (a) the application raises a constitutional matter; and (b) whether it is in the interests of justice to grant leave to appeal. The interests of justice require this court to consider, among other issues, the importance of the questions raised and the prospects of success of the application."[15]

[24] It bears emphasis that jurisdiction is a threshold enquiry.[16] If the Court does not have either constitutional or general jurisdiction, that is the end of the enquiry. If it does, the second important, and often neglected, enquiry is whether leave to appeal should be granted, a question where the interests of justice criterion is critical. Jurisdiction in and by itself does not grant a litigant access to this Court to pursue an appeal. This Court, may, in the exercise of its discretion, refuse leave to appeal if it is of the view that, even though the case engages either or both its constitutional and general jurisdiction, it is not in the interests of justice to grant leave.

[25] In *Boesak*,[17] this Court enunciated the principle thus:

> "A finding that a matter is a constitutional issue is not decisive. Leave may be refused if it is not in the interests of justice that the Court should hear the appeal. The decision to grant or refuse leave is a matter for the discretion of the Court and, in deciding whether or not to grant leave, the interests of justice remain fundamental. In considering the interests of justice, prospects of success, although not the only factor, are obviously an important aspect of the enquiry."[18]

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[15] Id at para 53.

[16] *Fraser v ABSA Bank Ltd* [2006] ZACC 24; 2007 (3) BCLR 219 (CC); 2007 (3) SA 484 (CC) at para 35.

[17] *S v Boesak* [2000] ZACC 25; 2001 (1) BCLR 36 (CC); 2001 (1) SA 912 (CC); 2001 (1) SACR 1 (CC).

[18] Id at para 12. The reference to "a constitutional issue" must of course be understood in the context that the case was decided before the 2013 amendment of the Constitution which added general jurisdiction to this Court's power to hear cases.

[26] This was reiterated later in *Ingledew*,[19] where this Court held that "a finding that the application raises a constitutional issue is not decisive. Leave to appeal may be refused if it is not in the interests of justice to hear the case."[20] Meeting the jurisdiction threshold merely establishes that the matter falls within the Court's remit; it does not entitle a litigant to an appeal as of right. In the important second stage, an applicant for leave to appeal must show that it is in the interests of justice that leave to appeal be granted. More recently, in *Rural Maintenance*, under the rubric of leave to appeal, this Court held:

> "The proper interpretation of the LRA will raise a constitutional issue that clothes this Court with jurisdiction, but this does not mean that this Court will hear all appeals from the Labour Appeal Court. It will only do so if the appeal raises 'important issues of principle'."[21]

[27] In *Gcaba*,[22] this Court wrestled with the diverging jurisprudence that emanated from this Court's decisions in *Fredericks*[23] and *Chirwa*[24] regarding the correct interpretation and application of overlapping constitutional, administrative and labour law provisions and principles, especially with regard to disputes between public sector employees and their employers.[25] I hasten to point out that, of course, *Gcaba* was decided before this Court's jurisdiction was extended to include general jurisdiction in 2013[26] and was confined to constitutional issues.

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[19] *Ingledew v Financial Services Board: In re Financial Services Board v Van der Merwe* [2003] ZACC 8; 2003 (4) SA 584 (CC) 2003 (8) BCLR 825.

[20] Id at para 13. See also *NEHAWU* above n 6 at para 25:

> "The decision to grant or refuse leave to appeal is a matter for the discretion of this Court. In deciding that question, *the interests of justice are crucial*. Whether it is in the interests of justice to grant leave to appeal is the function of a number of factors." (Emphasis added.)

[21] *Rural Maintenance* above n 11 at para 17.

[22] *Gcaba v Minister for Safety and Security* [2009] ZACC 26; 2010 (1) BCLR 35 (CC); 2010 (1) SA 238 (CC).

[23] *Fredericks v MEC for Education and Training, Eastern Cape* [2001] ZACC 6; 2002 (2) BCLR 113 (CC); [2002] 2 BLLR 119 (CC); 2002 (2) SA 693 (CC); (2002) 23 ILJ 81 (CC).

[24] *Chirwa v Transnet Ltd* [2007] ZACC 23; [2008] 2 BLLR 97 (CC); 2008 (3) BCLR 251 (CC); 2008 (4) SA 367 (CC); (2008) 29 ILJ 73 (CC).

[25] *Gcaba* above n 22 at para 3.

[26] By virtue of the Constitution Seventeenth Amendment Act 72 of 2012.

[28] This Court emphasised that the second stage of the enquiry, leave to appeal, entails a litigant persuading this Court that there is a legal principle in labour law that warrants the attention of this Court, as the apex court. This Court embarked on an extensive analysis of what the true issues were in the case to determine whether there was a legal principle that justifies this Court's attention. The central question was whether there was a divergence in the jurisprudence regarding section 157 of the LRA. That related to the seemingly divergent jurisprudence emanating from *Fredericks* and *Chirwa*.[27]

[29] It is important that the interests of justice criterion be afforded proper recognition when it comes to leave to appeal considerations. Jurisdiction is but the first step in the dual enquiry. The interests of justice criterion are essential to guard against this Court's assuming the role of a general super appellate body for labour disputes merely because a matter engages its jurisdiction. The essential enquiry remains whether leave to appeal should be granted, even where a labour matter involves the interpretation of a provision in the LRA.[28]

[30] Reverting then to the issue before us, namely whether this section 197 question engages our jurisdiction. Based on this Court's settled jurisprudence it does. But, as stated, that is not the end of the enquiry since we must be satisfied that it is in the interests of justice to grant leave to appeal. No new legal principles in relation to the interpretation and application of section 197 are being raised here; on the contrary, the Municipality's three-pronged challenge on the merits appears to be heavily fact-laden. The three grounds on which it seeks to impugn the judgments of the Labour Court and the Labour Appeal Court are:

[27] *Gcaba* above n 22 at paras 3, 5 and 70-5.

[28] See further, in respect of labour matters: *National Union of Metalworkers of South Africa v Bader Bop (Pty) Ltd* [2002] ZACC 30; [2003] 2 BLLR 103 (CC); 2003 (2) BCLR 182 (CC); 2003 (3) SA 513 (CC); (2003) 24 ILJ 305 (CC) at paras 15-17; *Billiton Aluminium SA Ltd t/a Hillside Aluminium v Khanyile* [2010] ZACC 3; 2010 (5) BCLR 422 (CC); [2010] 5 BLLR 465 (CC); (2010) 31 ILJ 273 (CC) at para 15; and *Booi v Amathole District Municipality* [2021] ZACC 36; [2022] 1 BLLR 1 (CC); 2022 (3) BCLR 265 (CC); (2022) 43 ILJ 91 (CC) at para 25.

(a) Firstly, a factual error, insofar as it is averred that both the Labour Court and the Labour Appeal Court mistakenly relied on the fact that the fixed assets owned by the Municipality and used by WSSA fell within the scope of WSSA's business offerings, and reverting of the right of use of these to the Municipality constituted a transfer in terms of section 197(1)(b) of the LRA.

(b) Secondly, the Municipality contends that both Courts did not apply the "going concern" test when applying section 197 of the LRA. Instead, it is submitted the Courts applied a "new and incorrect" test, which is referred to as the "flexible approach" to determine whether the going concern requirement had been met. This is nothing but a factual dispute, dressed up as a law point. At best for the Municipality, the law on this aspect is settled and need not be revisited.[29]

(c) Lastly, another factual dispute, that both the Labour Court and the Labour Appeal Court are submitted to have erred in finding that there was an agreement between the Municipality and WSSA that on the termination of the SLA, the employees of WSSA would be transferred to the Municipality or to a new service provider in terms of section 197(2).

[31] It is plain then, on a conspectus of all the arguments advanced by the Municipality, that, while this Court's jurisdiction is engaged, it is not in the interests of justice that we grant leave to appeal as no new legal principles are being raised here. The law regarding the transfer of a business as contemplated in section 197 is trite.[30] No new principles in relation to that issue are advanced by the Municipality. There is no new legal argument submitted that can persuade this Court to interfere with well-reasoned factual findings made by the two specialist labour courts. Leave to appeal must therefore be refused. What remains is the matter of costs.

[29] See *NEHAWU* above n 6 at para 56; *Tasima* above n 8 at para 60; and *Rural Maintenance* above n 11 at paras 142-50.

[30] See the cases cited in n 11 above. See also *Carlito Abler v Sodexho MM Catering Gesellschaft GmbH* [2004] IRLR 168, cited in *Rural Maintenance* above n 11 at para 34 and *Mobile Telephone Networks (Pty) Ltd v CCI SA (Umhlanga) (Pty) Ltd* [2023] ZALAC 10; (2023) 4 ILJ 1906 (LAC) at para 11.

[32] Conventionally, no costs orders are made in labour matters, in order not to stifle access to courts.[31] In *Union for Police Security*,[32] this Court explicated the rationale behind this convention. It stated:

> "[W]hen costs orders are too readily made against those who seek to vindicate their constitutionally entrenched labour rights in the specialist institutions created by the LRA, employers and employees alike may be left with no option but to resort to industrial action to remedy disputes that the LRA places beyond the purview of protected industrial action. That would cultivate unlawfulness and be inimical to the foundational value of the rule of law underpinning our democratic order.
>
> It is therefore imperative for our democracy that the doors of labour dispute-resolution institutions be kept wide open for litigants to air their grievances, so that unlawful industrial action, and all its potential consequences, is generally avoided. That accords with the scheme of the LRA, which contemplates industrial action only where no other avenues are readily available. The rule against automatic costs orders is an integral part of that scheme in that it ensures access to labour dispute-resolution institutions and no doubt enlarges the width by which the doors of those institutions are kept open.
>
> The principles set out above form the bedrock of how the question of costs should be understood in labour matters in the context of our democracy. These principles find expression in section 162 of the LRA, which rejects the ordinary rule of litigation that costs should follow the result in favour of an approach based on 'law and fairness'. When we pay heed to this fairness standard, we do so because we are obliged by the LRA and the above constitutional imperatives. Hence, I repeat: when making costs orders in labour matters, courts are enjoined to apply the fairness standard in the LRA as a matter of constitutional and statutory obligation."[33] (Footnotes omitted.)

[31] *Zungu v Premier of the Province of KwaZulu-Natal* [2018] ZACC 1; 2018 (6) BCLR 686 (CC); (2018) 39 ILJ 523 (CC). See also *South African Commercial, Catering and Allied Workers Union v Woolworths (Pty) Ltd* [2018] ZACC 44; 2019 (3) BCLR 412 (CC); 2019 (3) SA 362 (CC); [2019] 4 BLLR 323 (CC).

[32] *Union for Police Security & Corrections Organisation v SA Custodial Management (Pty) Ltd* [2021] ZACC 26; 2021 (11) BCLR 1249 (CC); (2021) 42 ILJ 2371 (CC).

[33] Id at paras 31-3. See also *Solidarity obo Members v Barloworld Equipment Southern Africa* [2022] ZACC 15; [2022] 9 BLLR 779 (CC); (2022) 43 ILJ 1757 (CC); 2023 (1) BCLR 51 (CC) at para 79.

[33] The present matter, however, is not a purely labour matter. Instead, it is in essence a commercial dispute between an organ of state and a private company. The section 197 question involving the workforce is an incidental part of that dispute. In suitable cases, there is no bar against a costs order.[34] Moreover, the Municipality's conduct in this case has been far from exemplary. The Labour Court correctly alluded to the fact that the Municipality's version that it had outsourced the water tanker services and call centre function from WSSA to Umgeni Water after the termination of the last SLA (a version strenuously denied by Umgeni Water), was either false or grossly ignorant of the true state of affairs.

[34] Furthermore, as appears from the litigation history,[35] evidently more than three years elapsed between the granting of leave to appeal by the Labour Court and the hearing of the appeal in the Labour Appeal Court. This was claimed to be the result of the Municipality's obstructionist approach to the matter, a claim which was not denied by the Municipality. This delay plainly had a deleterious effect on the affected workforce (the 600-odd employees previously employed by WSSA) regarding their security of employment. That, in turn, is inimical to the constitutional and statutory objective of efficient dispute resolution in labour matters.[36]

[35] For these reasons, costs must follow the outcome. The matter warranted the employment of two counsel and the costs order should include this.

[36] The following order is made:

Leave to appeal is refused with costs, including the costs of two counsel.

[34] *Zungu* above n 31 at para 24.

[35] See [12].

[36] Compare *NEHAWU* above n 6 at para 31.

For the Applicant:	M Naidoo SC, M Naidoo and S Tshangana instructed by Ngwanase-Tembe Incorporated.
For the First Respondent:	A Redding SC and P Maharaj-Pillay instructed by Fairbridges Wertheim Becker Attorneys.