

Employment Law

ALERT

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INCORPORATING
KIETI LAW LLP, KENYA

IN THIS ISSUE

What happens when there are no employee/employment contracts transferred? Is the business still transferred as a going concern?

The Labour Court recently had to decide whether the termination of a service agreement and the concluding of another service agreement with a new service provider to render the same or similar services constituted the transfer of a business as a going concern in terms of section 197 of the Labour Relations Act 66 of 1995 (LRA).



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The Labour Court recently had to decide whether the termination of a service agreement and the concluding of another service agreement with a new service provider to render the same or similar services constituted the transfer of a business as a going concern in terms of section 197 of the Labour Relations Act 66 of 1995 (LRA).

This matter is novel in that the court had to decide whether a business is capable of being transferred as a going concern if the employees of the transferor employer are engaged on fixed-term contracts that terminate when the service agreement between the transferor employer and its client terminates.


The submission made by the respondent party in these proceedings was that, once the first service agreement is terminated, there would be no employees (and no employment contracts) to be transferred after the effective date of termination of the first service agreement.

The court rejected this argument and found that – even if this is the case and that there would be no employees (and no employment

contracts) to be transferred after the effective date of termination of the first service agreement – section 197 provides for “*post-transfer obligations*” on the part of the transferor employer, where the latter becomes jointly and severally liable with the transferee employer, to any employee who becomes entitled to receive payment for accrued leave and severance pay.

Accordingly, the principle is that – even if few to no employees are, in fact, transferred – one must consider whether the substantive requirements of section 197 of the LRA have been met, if only for determination of whether post-transfer obligations came into existence.

**Chantell De Gouveia and
JJ van der Walt**



Annual
Employment Law
Webinar

Client Centricity: Workplace Synergies

Date
Wednesday, 25 October 2023

Time
09h00 – 13h00 (CAT)

[Click here to register](#)

**2
weeks
to go**

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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