Employment Law

18 May 2026

South Africa

- Two steps to leave to appeal to the Constitutional Court
- Adjudicator draws a hard line on whether pension death benefits can default to beneficiary funds for minors

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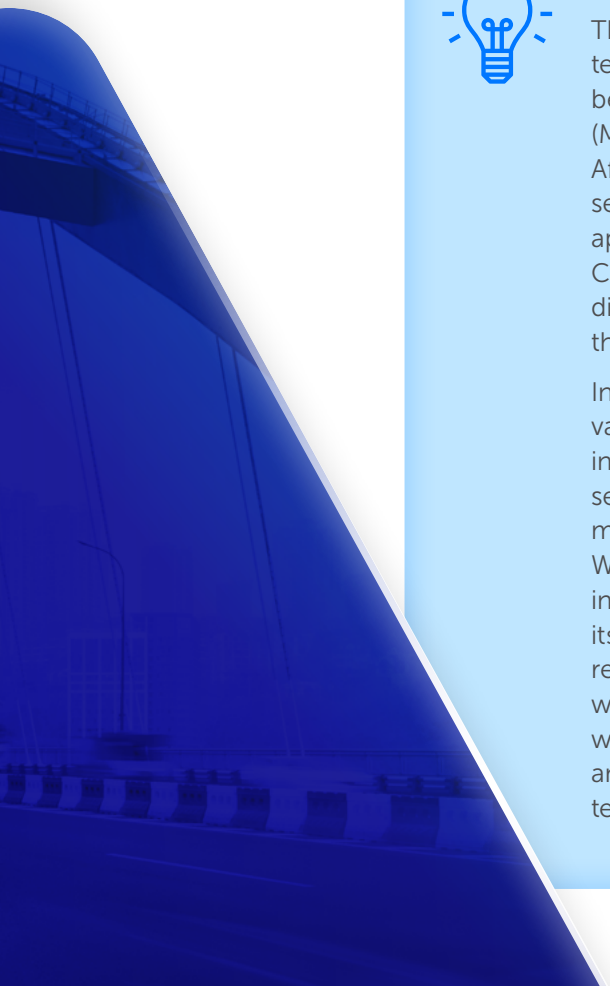
Two steps to leave to appeal to the Constitutional Court

In *King Cetshwayo District Municipality v Water and Sanitation Services South Africa (Pty) Ltd and Others* (CCT 15/25) [2026] ZACC 14 (22 April 2026) the Constitutional Court emphasised that not every dispute involving section 197 of the Labour Relations Act 66 of 1995 (LRA) engages its jurisdiction and warrants intervention by granting leave to appeal.



Background

The key issue in the underlying dispute was whether the termination of a service level agreement (SLA) concluded between the King Cetshwayo District Municipality (Municipality) and Water and Sanitation Services of South Africa (Pty) Ltd (WSSA) for the provision of bulk water services to the Municipality's residents triggered the application of section 197 of the LRA. Both the Labour Court and the Labour Appeal Court (LAC) found that it did. Therefore, the Municipality sought leave to appeal to the Constitutional Court

In terms of the SLA, WSSA was responsible for providing various services related to the Municipality's water infrastructure. These services included operational services, maintenance, monitoring and general asset management services. To fulfil these obligations, WSSA was granted the right to use the Municipality's infrastructure and subsequently provided some of its own assets, tools, software and employees. The relationship between the parties commenced in 2003 when the first SLA was concluded. Subsequent SLAs were concluded and extended until the non-renewal and ultimate termination on 30 June 2020. At the time of termination of the SLA, WSSA employed 666 employees.

Prior to the termination of the SLA, on 30 June 2020, WSSA raised a concern with the Municipality that the termination would trigger the effect of section 197 of the LRA. It contended that, upon termination, the Municipality was required to take transfer of the 666 employees. Alternatively that, in terms of the SLA, a new service provider must take transfer of the employees. The Municipality disputed this, contending that WSSA was seeking to avoid undertaking a retrenchment process.

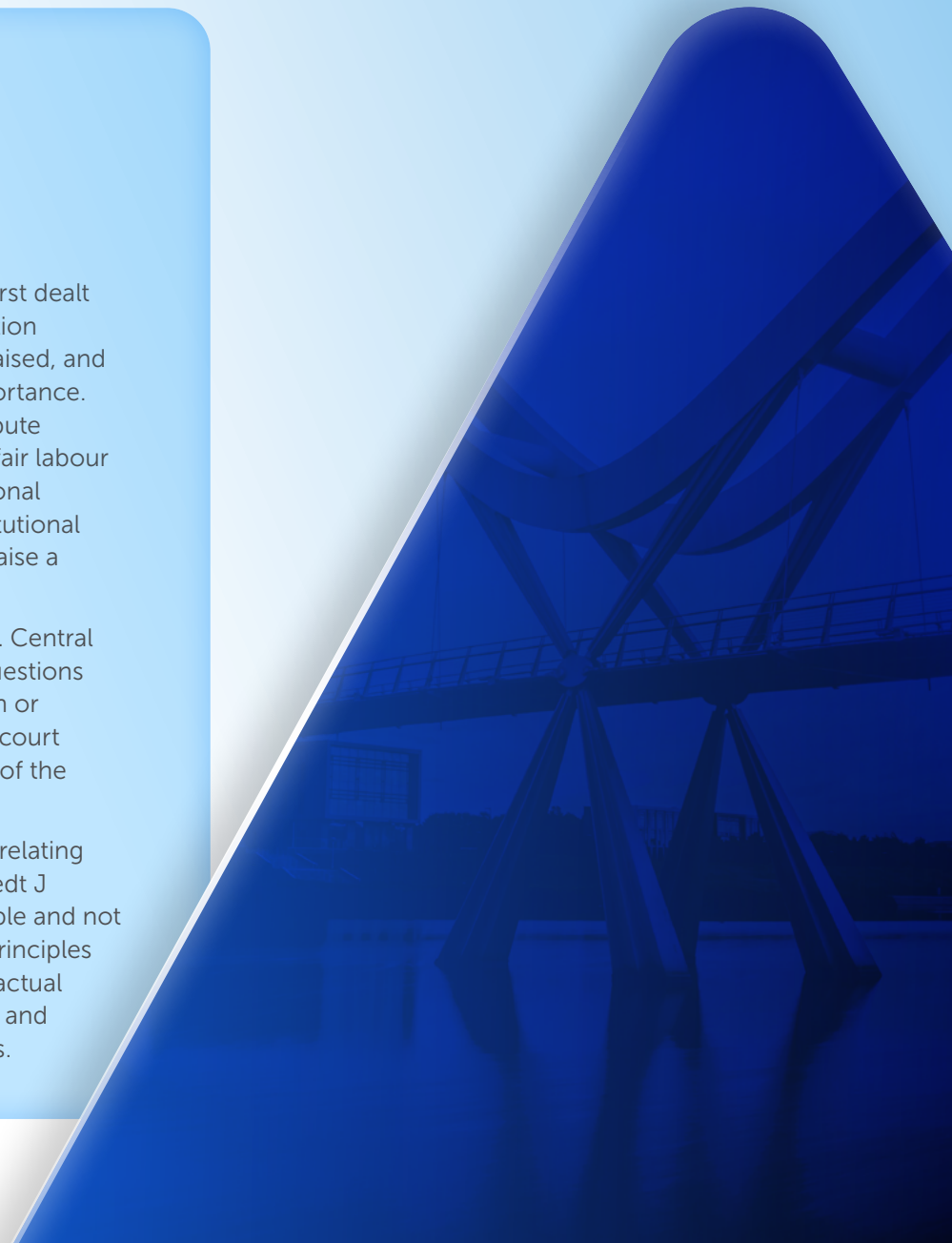
WSSA approached the Labour Court on an urgent basis seeking a declarator that the termination of the SLA constituted a transfer of a business as a going concern in terms of section 197. The Labour Court upheld WSSA's position, finding that the termination of the SLA constituted a transfer in terms of section 197 and 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. On appeal, the LAC upheld the Labour Court's finding and held that the requirements of section 197 of the LRA were met as the business of providing bulk water services continued, albeit now in different hands.

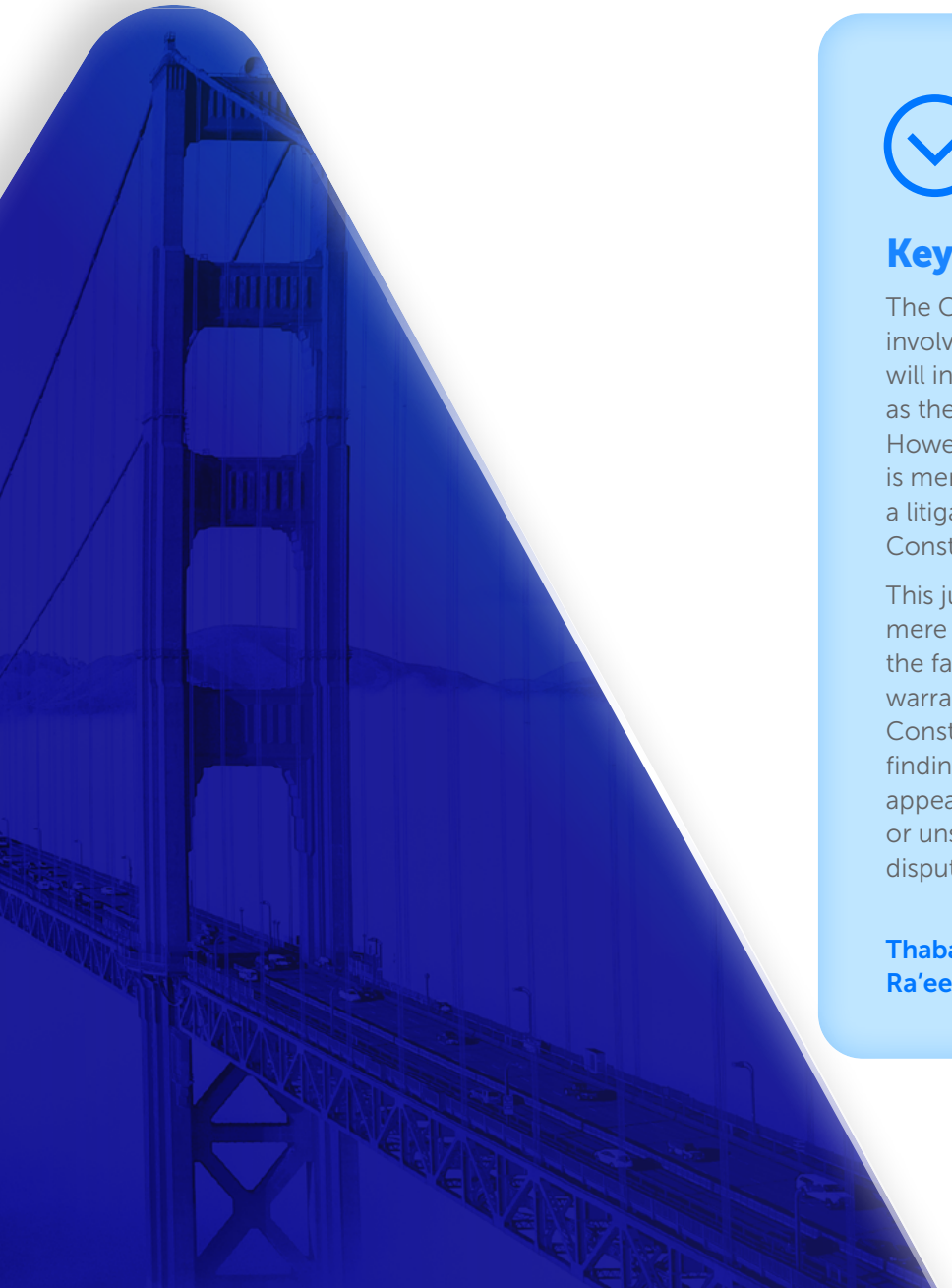
The Constitutional Court

In addressing the Municipality's application for leave to appeal, the Constitutional Court first dealt with whether it had jurisdiction to hear the appeal. In this regard, Majiedt J drew a distinction between the court's constitutional jurisdiction, that is whether a constitutional matter is raised, and general jurisdiction, that is whether the matter raises a point of law of general public importance. The Constitutional Court found that its constitutional jurisdiction was engaged as the dispute concerned the interpretation of section 197 of the LRA, which gives effect to the right to fair labour practices in terms of section 23 of the Constitution. Consistent with the earlier Constitutional Court decision of *NEHAWU v University of Cape Town* [2015] 8 BLLR 757 (CC), the Constitutional Court reiterated that disputes relating to the interpretation of the LRA will almost always raise a constitutional issue.

The court then turned to whether it was in the interests of justice to grant leave to appeal. Central to this enquiry were the prospects of success and the importance of the constitutional questions raised. In other words, an appeal must raise questions of principle about the interpretation or constitutionality or the scope of constitutional labour rights. A litigant must persuade the court that the appeal raises new legal principle or new legal argument warranting the attention of the Constitutional Court.

Turning to the dispute before it, the Constitutional Court found that no novel legal issues relating to section 197 of the LRA were raised by the Municipality. In a unanimous judgment, Majiedt J emphasised that the role of the Constitutional Court is to determine issues of legal principle and not to re-evaluate factual findings or the incorrect or alleged misapplication of settled legal principles by the lower courts. The court surmised the Municipality's grounds of appeal as being a factual error; misapplication of the 'going concern test' and error of findings of the Labour Court and LAC respectively. The Constitutional Court accordingly refused leave to appeal, with costs.





Key takeaways

The Constitutional Court reaffirmed that disputes involving the interpretation and application of the LRA will invariably engage its constitutional jurisdiction as the statute gives effect to a constitutional right. However, the judgment makes it clear that jurisdiction is merely the threshold enquiry and does not entitle a litigant to have an appeal entertained by the Constitutional Court.

This judgment also serves as a reminder that the mere misapplication of law or disagreement with the factual findings by lower courts is insufficient to warrant intervention from the Constitutional Court. The Constitutional Court's role is not to re-evaluate factual findings or the misapplication of legal tests. Rather, appeals before the Constitutional Court must raise new or unsettled questions of law a rather than fact specific disputes dressed up as questions of principle.

Thabang Rapuleng, Leila Moosa, Ra'ees Ebrahim and Mbulelo Qotoyi

Adjudicator draws a hard line on whether pension death benefits can default to beneficiary funds for minors

Death benefits payable by a retirement fund do not form part of a deceased's estate. Instead, they must be distributed by the board of trustees in accordance with section 37C of the Pension Funds Act 24 of 1956, which requires an equitable allocation among dependants and nominees.

Where a beneficiary is a minor, the trustees must determine the most appropriate mode of payment. Section 37C(2)(a) provides that payment to a beneficiary fund is deemed to be payment to the dependant. What this means is that the trustees have two options:

1. Payment to the surviving guardian

This is the default position. Paying the benefit to the minor's legal guardian (typically a parent), who administers the benefit on behalf of the child until majority. Departure from this position requires good cause – specifically, a reasonable apprehension that the guardian may not appropriately safeguard the benefit.

2. Payment to a beneficiary fund

A beneficiary fund administers the benefit on behalf of the minor, typically releasing funds periodically for maintenance, education and related expenses until the child reaches majority.

Importantly, the board's obligations extend beyond merely selecting where to make payment. It must:

- properly investigate and identify all dependants;
- determine an equitable allocation; and
- select an appropriate mode of payment based on a fact-specific inquiry.

A failure to properly assess the guardian's capacity renders decisions susceptible to challenge and reversal.

A common (and increasingly risky) approach adopted by boards is to channel minor beneficiaries' benefits into beneficiary funds as a default safeguard. The Pension Fund Adjudicator's (Adjudicator) decision in *Jumba v Auto Workers Provident Fund* [2025] 3 BPLR 53 (PFA) confirms that this approach is legally flawed. Payment to a guardian is the starting point, and trustees must justify any decision to depart from it..

Jumba reaffirms that the inquiry must be fact-specific, documented and centred on the child's best interests.

Key facts

Ms Jumba was the life partner of Mr Mfaxa (the deceased), a member of the Auto Workers Provident Fund, who passed away on 10 April 2022. Upon his death, a death benefit of R274,482.24 became available for distribution.

The fund's board of trustees initially allocated 25% of the benefit to Jumba, with the remainder split between the couple's two minor sons.

Following the emergence of new information indicating that the deceased had additional children, the board revised the allocation: Jumba's share was reduced to 5%, her two sons each received 20%, and the balance was distributed among the other dependents.

The board further decided to pay the children's shares into a beneficiary fund rather than directly to Jumba in her capacity as their guardian.

Jumba objected to this decision, contending that the fund had failed to properly assess her ability to administer the funds on behalf of her minor children. She also pointed out that lump sum payments had been made to other beneficiaries without similar restrictions.

The Adjudicator set aside the board's decision and directed the fund to assess the guardian's capacity and, if appropriate, pay her directly.

Where the fund failed

The Adjudicator identified fundamental defects in the board's decision-making:

- No proper investigation into the guardian's financial capability.
- No evidence of risk or unfitness.
- Unsubstantiated reliance on the guardian's alleged consent to make payment to the beneficiary fund.
- Inconsistent treatment of beneficiaries.
- A failure to apply a fact-specific enquiry.

What trustees must do

Before deciding on the mode of payment, trustees must:

- Conduct a proper, documented assessment of the guardian.
- Apply the best interests of the child as the overriding standard.
- Identify objective risk factors (if relying on a beneficiary fund).
- Ensure consistency across beneficiaries.
- Retain clear evidence supporting the decision.

Key takeaway

The Adjudicator has drawn a clear line: beneficiary funds are not a default risk management tool – they are a justified exception. Absent clear and documented grounds, trustees must pay the guardian.

Imraan Mahomed and Thato Makoaba

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