

**National Education Health and Allied Workers Union v University of Cape Town  
and Others**

**Case CCT 2/02**

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Explanatory Note

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*The following explanation is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

This morning the Constitutional Court handed down judgment granting leave to appeal and upholding an appeal lodged by NEHAWU against a decision of the Labour Appeal Court dismissing its appeal to that court. The appeal arose out of a decision by the University of Cape Town to outsource certain of its services to contractors. NEHAWU challenged this decision in an application to the Labour Court contending that the workers who had been dismissed as a result of the outsourcing should be taken over by the contractors as required by section 197 of the Labour Relations Act. The Labour Court dismissed NEHAWU's application.

The main issue in this case was whether upon the transfer of a business as a going concern, in the context of section 197, workers are automatically transferred to the new owner of the business as part of the transaction. The LAC, in a majority judgment, dismissed the appeal by NEHAWU, holding that the employees can only be taken over by the new owner where there is a prior agreement between the transferor employer and the transferee employer that the workers or a majority of them are part and parcel of the transaction.

NEHAWU approached the Constitutional Court seeking special leave to appeal against the decision of the Labour Appeal Court (LAC) contending that the interpretation of section 197 by the majority of the LAC failed to give effect to the dismissed employees' constitutional right to fair labour practices. UCT and two of the contractors contesting the appeal contended that the Constitutional Court does not have jurisdiction to hear the matter because it does not raise a constitutional issue and that the proper construction of section 197 is that given by the majority of the LAC.

In addition to this, the appeal raises important questions in relation to whether appeals from the LAC lie to the SCA or the Constitutional Court, the procedure to be followed in appeals from the LAC to this Court and the circumstances in which this Court will hear such appeals.

Justice Ngcobo, in a unanimous judgment, found that the case did raise a constitutional issue. He held that where statutes are enacted to give effect to constitutional rights, the proper interpretation of these statutes is a constitutional matter. He held that the main purpose of section 197 is to protect workers against loss of employment in the event of a transfer of a business as a going concern. The Court found that section 197 is for the benefit of both employers and workers as it facilitates the transfer of businesses while protecting the workers. It held therefore that upon the transfer of a business as a going concern as contemplated in section 197, workers are automatically transferred to the new owner without the need for a prior agreement between the old and new employer. Thus the effect of the

section is that the new employer takes over the workforce and all the rights and obligations flowing from their contracts of employment.

The Court also made rulings on procedural matters relating to appeals from the LAC. First, it ruled that appeals from the LAC lie to the Supreme Court of Appeal in terms of the Constitution, although in certain circumstances such appeals may come directly to the Constitutional Court. Second, it ruled that it will be slow to hear appeals from the LAC unless such appeals raise important issues of principle. This is so because by their very nature, labour disputes must be resolved expeditiously and be brought to finality so that parties can organise their affairs accordingly and it is in the public interest that labour disputes be resolved expeditiously by experts appointed for that purpose.