



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **Rural Maintenance (Pty) Ltd and Another v Maluti - A - Phofung Local Municipality**

**CCT 214/15**

**Date of hearing: 3 May 2016**

---

#### **MEDIA SUMMARY**

---

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

On Tuesday 3 May 2016 at 10h00, the Constitutional Court will hear an application for leave to appeal the decision of the Labour Appeal Court, which overturned a judgment handed down by the Labour Court in favour of the applicants.

The applicants are Rural Maintenance (Pty) Ltd and Rural Maintenance (Free State) (Pty) Ltd (collectively Rural Maintenance). The matter concerns the interpretation and application of section 197 of the Labour Relations Act (LRA) in an outsourcing contract for the supply, maintenance and upgrade of electricity services between Rural Maintenance and the respondent, Maluti-A-Phofung Local Municipality (Municipality).

The Municipality outsourced the supply of electricity to the applicants in terms of an agreement intended to last 25 years. As part of that agreement, Rural Maintenance took over 16 employees of the Municipality who were in a unit that was responsible for electricity supply. Rural Maintenance also increased their workforce by employing additional employees. They also allege that they injected a massive capital investment to replace and upgrade the Municipality's equipment. Subsequently, the Municipality sought to disregard the outsourcing agreement on the basis that its municipal manager who concluded the agreement on its behalf, had no authority to enter into that contract. The validity of the agreement is the subject matter of litigation pending before the High Court of South Africa, Free State Division, Bloemfontein.

In the meantime, Rural Maintenance handed back certain infrastructure and assets to the Municipality. They also submitted information on 127 employees who were affected by the handover, including the 16 employees who had been taken over from the Municipality at the commencement of the agreement. This was purportedly done in terms of section 197 of the LRA. The Municipality refused to take over the workers and a dispute between the parties arose on whether section 197 applied to the handover.

The matter was taken to the Labour Court. In resisting the applicability of section 197, the Municipality argued that there was no transfer of a business as a going concern because the applicants did not transfer all of the assets to it and the improvements on the infrastructure were minimal and, as a result, the Municipality could not resume the service. The Labour Court rejected this argument and held that there was a transfer of business as a going concern and that section 197 applied. It held that it was not necessary for all assets of the business to be transferred. Consequently, the Labour Court declared that when the outsourcing agreement was cancelled, the employment contracts of the 127 workers were transferred to the Municipality by operation of section 197(2) of the LRA.

The Municipality appealed to the Labour Appeal Court. The Labour Appeal Court held that the assets withheld by Rural Maintenance were necessary for the conduct of the business. Given that those assets were not transferred, the municipality could not seamlessly resume running the business without putting in further investment. The Labour Appeal Court concluded that in those circumstances it could not be said that the business had been transferred as a going concern. The provisions of section 197 were thus not applicable.

Before the Constitutional Court, Rural Maintenance seeks leave to appeal against the Labour Appeal Court's decision. They argue that the Labour Appeal Court introduced a new test in respect of section 197 of 'seamlessness' that is more stringent than the test previously laid down by this Court.

The Municipality disputes that the Labour Appeal Court introduced and applied a new test. It submits that crucial assets necessary for the viability of the business as an economic entity were not transferred to it. It argues that it was therefore impossible for it to operate the business in substantially the same manner after transfer and that for this reason the business was not transferred as a going concern.