

21 NOVEMBER 2016

EMPLOYMENT ALERT

Our programme on Conducting a Disciplinary Enquiry has been accredited by the Services SETA.

IN THIS ISSUE

I'M LEAVING, NO YOU ARE FIRED

In the recent unreported case of *Kalipa Mtati v KPMG Services (Pty) Ltd* (Case No: J2277/16), an employee submitted two resignation letters to her employer. Her first resignation letter was submitted after her employer informed her that it was investigating certain allegations made against her. The letter stated, "Please accept this letter as notice of my resignation."



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Despite having resigned, the employee submitted a second resignation a few days later after she was informed that the employer would nonetheless continue with the disciplinary proceedings against her.

The court distinguished between situations where an employee resigns on notice and situations where an employee resigns with immediate effect. In this case, the employee first resigned on notice and then resigned again with immediate effect.

In the recent unreported case of *Kalipa Mtati v KPMG Services (Pty) Ltd* (Case No: J2277/16), an employee submitted two resignation letters to her employer. Her first resignation letter was submitted after her employer informed her that it was investigating certain allegations made against her. The letter stated, "Please accept this letter as notice of my resignation."

Despite having resigned, the employee submitted a second resignation a few days after she was informed that the employer would nonetheless continue with the disciplinary proceedings against her. The second resignation letter indicated that the employee was resigning but this time with immediate effect.

Despite the employee's resignations, the employer proceeded with the disciplinary hearing. At the hearing, the employee challenged whether the chairperson could discipline her following her resignation. The chairperson ruled that she could and proceeded with the hearing. The employee left the hearing after informing the chairperson of her intention to approach the court for an order interdicting the employer from proceeding with the hearing following her resignation. It would appear that the second resignation was aimed at avoiding a dismissal on her record and instead seeking to leave immediately and on her own terms.

The employee did indeed approach the court on an urgent basis. The employee's case was that the employer could not discipline her as she had resigned and the chairperson's decision was as a result null and void.

The court distinguished between situations where an employee resigns on notice and situations where an employee resigns with

immediate effect. In this case, the employee first resigned on notice and then resigned again with immediate effect.

The court held that "the fact that an employee has given notice to terminate the employment contract does not take away the power of the employer to discipline [the employee] whilst serving the notice period." In other words, the employer can take disciplinary action against an employee during the employee's notice period.

However, the court held that the second resignation letter, which was issued with immediate effect, took away the employer's right to take disciplinary action against the employee. The employee could terminate the employment contract during her notice period even though the employer had accepted the employee's first resignation.

Accordingly, and at the time of the disciplinary hearing proceeding, there was no contract of employment between the parties due to the employee's second resignation, and as a result the employer could not discipline the employee. The court held that the decision to dismiss the employee was a nullity and the employer could not discipline the employee following her second resignation.

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CONTINUED

The employer may proceed with disciplinary action despite the resignation, if the employee resigns on notice and the disciplinary proceedings occur during the employee's notice period.

This is an interesting decision as it directly impacts employers who chose to continue with disciplinary proceedings notwithstanding an employee's resignation. Employers may have a number of reasons to continue with the disciplinary proceedings. A dishonesty-related dismissal, for instance in the banking industry will have an impact on the employee's future employment within that industry.

Following this decision, the employer may proceed with disciplinary action despite the resignation, if the employee resigns on notice and the disciplinary proceedings occur during the employee's notice period. However, the situation is not the same if the resignation is with immediate effect. It is however important in these circumstances to note that an employee who fails to give proper notice may be acting in breach the employment contract.

Samantha Coetzer, Nicholas Preston and Reabetswe Mampane



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