

EMPLOYMENT LAW

ALERT

25 APRIL 2022



INCORPORATING
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I quit! (Or do I?): The latest on whether an employee can unilaterally withdraw a resignation

What happens when an employee tenders – and then unilaterally seeks to withdraw – a resignation? This was the question before the Labour Court (LC) in *Mohlwaadibona v Dr JS Moroka Municipality* (Case No: J718/21) (18 March 2022).



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I quit! (Or do I?): The latest on whether an employee can unilaterally withdraw a resignation

What happens when an employee tenders – and then unilaterally seeks to withdraw – a resignation? This was the question before the Labour Court (LC) in *Mohlwaadibona v Dr JS Moroka Municipality* (Case No: J718/21) (18 March 2022).

At the beginning of April 2021, Mr Mohlwaadibona, the applicant, resigned from the employ of Dr JS Moroka Municipality due to ill-health. On 15 April 2021, he attempted to withdraw his resignation and indicated that he was prepared to resume his duties four days later. As the municipality had been under administration since January 2020, Mr Mhlanga dealt with the matter in his capacity as the appointed administrator. He informed the applicant that the municipality did not accept the withdrawal, but the applicant claimed that he only received this communication on 23 April 2021, after having reported for duty on 19 April 2021, by which time he had already received his April salary. Despite Mhlanga's earlier communication to the applicant, on 10 May 2021 Mr Monkoe, who was the acting municipal manager, advised Mohlwaadibona that he had accepted the withdrawal of his resignation.

The questions before the LC were three-fold: What is the effect of a resignation on the employment relationship? When does a resignation actually take effect? Can a resignation be unilaterally withdrawn and, if not, what would be required to revive the employment relationship?

The court held that resignation is by definition a voluntary and unilateral act that puts an end to the employment relationship. Moreover, it takes effect the moment it is communicated to the employer, and it is incapable of being withdrawn unless the employer consents to it. That is true even where an employee is contractually obliged to serve a notice period and fails to honour that obligation. The court indicated that once the resignation has taken effect, the employer's consent to withdraw it is equivalent to a re-employment or a rehiring of the employee, but it is not tantamount to a reinstatement.

The court maintained that since the applicant had communicated his resignation to his employer on 1 April 2021, the resignation took effect immediately. When he communicated his intention to withdraw the resignation on 15 April, he was in effect seeking re-employment. Mhlanga's communication on 15 April was a sufficient rejection of the applicant's withdrawal and neither the latter's decision to report for duty on 19 April nor the payment of his salary on 25 April altered that fact. What is more, because the acting municipal manager had no authority to effect re-employment, the court found his later acceptance of the applicant's withdrawal to be invalid and of no force and effect.

I quit! (Or do I?): The latest on whether an employee can unilaterally withdraw a resignation

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In essence, the court gave credence to the fact that when an employee voluntarily elects to communicate their intention to terminate the employment relationship, that election cannot be unilaterally withdrawn once it has been communicated to the employer. Where the employee was bound to serve a notice period, their failure to serve that period will not negate the effect of the resignation, as the employment contract will still have reached an end. The only way to

revive the contract of employment would be through a fresh offer and acceptance – which amounts to rehiring or re-employment. This can occur if the employer opts to consent to the withdrawal of a resignation, but the employer's representative who consents to the withdrawal must be a person authorised to rehire or re-employ; anything to the contrary would be invalid and of no force and effect.

**FIONA LEPPAN, KGODISHO PHASHE
AND LISO ZENANI**

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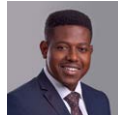
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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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