

You can't simply retract a resignation...

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30 May 2022

Reading like Shakespeare's 'The Comedy of Errors', a recent Labour Court judgment wades through muddled water to reiterate the crystal-clear effect of an employee's resignation in *Mohlwaadibona v Dr JS Moroka Municipality* [2022]...



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While the events of this matter unfolded, the employer, Dr JS Moroka Municipality, was under administration and the appointed administrator, Mr Mhlanga, dealt with the matter. The employee was suffering from a mysterious illness which resulted in his resignation with immediate effect on 1 April 2021. Fifteen days later, by a stroke of miraculous good fortune, his health condition improved, and he wrote a letter to his employer seeking to withdraw his resignation. On the same day he received a letter from Mhlanga, who informed him that the withdrawal of his resignation was not accepted.

Claiming that he had not seen Mhlanga's response, the employee returned to work and received his April salary. He turned to the acting municipal manager to affirm his continued employment, who accepted the withdrawal on 10 May 2021.

Was the employee's resignation even capable of being retracted? The court recognised that resignations are unilateral acts that take effect once communicated by the employee to an employer. They do not require any further action from the employer. This act serves to terminate the employment relationship and the employee's notice does not constitute a cooling-off period during which time an employee may backtrack on the decision. While employees are obliged to serve their notice period, failure to do so does not negate the effect of a resignation.



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The court explained that an employee retracting a resignation is effectively seeking to be re-hired or re-employed. If both employee and employer consent to continue the employment relationship, the subsequent employment relationship will be based on a new offer and acceptance of employment. On this reasoning, the employee's argument that his employment relationship continued unaffected because he reported for duty and received a salary had to fail. The unilateral retraction

could not hold.

The court then turned to Mhlanga's refusal and the acting municipal manager's acceptance of the retracted resignation. Which decision would prevail? Since a mutually agreed retraction of a resignation amounts to re-employment, the representative acting for the employer must have the authority to offer employment. If this authority to hire is lacking, any attempt to re-hire the employee is invalid and has no force or effect.

In the local government sphere, the Local Government: Municipal Systems Act 32 of 2000 and Municipal Financial Management Act 56 of 2003 provide for the manner in which municipal powers and functions are exercised. With reference to these acts, the court determined that the acting municipal manager did not have unfettered powers to incur expenses on behalf of the municipality, including those associated with new hires. Therefore, the acting municipal manager's actions could not be enforced since he did not comply with the statutory mandates required to lawfully bind the municipality.

The steadfast finding of the court reinforces the notion that a voluntary and deliberate resignation has the legal effect of ending the employment relationship. Reviving that relationship can only take effect in the form of a new offer and acceptance. This offer must be made by a representative of an employer with the required authority and legal capacity to make it enforceable.

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