



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable
Case no: J551/20

In the matter between:

GERSON NEVARI

Applicant

and

DEPARTMENT OF TOURISM

First Respondent

DIRECTOR-GENERAL (DEPARTMENT OF TOURISM)

Second Respondent

Heard: 1 October 2024.

Delivered: 26 August 2025.

(This judgment was handed down electronically by circulation to the parties' representatives by email. The date of hand-down is deemed to be on 26 August 2025.)

JUDGMENT

MYBURGH AJ

Introduction

[1] There has been an unfortunate delay in handing down this judgment caused by an administrative bungle on my side. Previous follow ups by the State Attorney were also, regrettably, not brought to my attention.

[2] The applicant was employed by the first respondent ("the Department") as the Head of Office in the office of the Deputy Minister of Tourism on a five-year fixed-term contract of employment running from 1 June 2019 to 30 May 2024. The five-year term of employment was linked to the term of the Deputy Minister's political appointment.

[3] In terms of his amended notice of motion, the applicant seeks an order:
"Declaring that the applicant did not tender his resignation to the respondent on or during November 2019 as alleged by the respondents. ...
[Ordering] the respondents to compensate the applicant for the remaining period of his 5 year contract of employment."

[4] The applicant's claim is one based on his contract of employment, with the essential issue for determination being whether he resigned his employment with the Department.

[5] The position of the Deputy Minister should be clarified at the outset. Although it was contended by the respondents that he ought to have been joined as a party, I am of the view that this was unnecessary as he was not the applicant's employer and no relief is sought against him. Mention should also be made of the fact that the Deputy Minister did not put up an affidavit confirming the respondents' version pleaded in their answering affidavit (deposed to by the second respondent ("the DG")), insofar as it related to him. This despite the fact that the DG makes much mention of the Deputy Minister in the answering affidavit. As expanded on below, this has material consequences for the outcome of this application.

The factual matrix

[6] Although employed by the Department, in terms of the position held by the applicant (i.e. Head of Office), he reported directly to the Deputy Minister, as opposed to the DG.

[7] On 25 September 2019, the applicant was placed on precautionary suspension.

[8] What followed was an investigation into allegations of sexual harassment against the applicant, which he participated in. On 2 December 2019, after the elapse of 60 days following the applicant's suspension without charges having been brought against him, NEHAWU demanded that his suspension be uplifted.

[9] These events were the prelude to the applicant being called to a meeting at the Deputy Minister's official residence on 17 December 2019. On the applicant's version of this meeting: the Deputy Minister informed him that the report into the investigation was very bad, and suggested that he should resign because the DG was planning to charge him and he would be dismissed; and following the applicant having professed his innocence, it was agreed that he and the Deputy Minister would sleep on the matter and discuss it further the next morning.

[10] This is what transpired on 18 December 2019 (with the controversy between the parties being interposed):

- a) At 08:07, the Deputy Minister sent the applicant a WhatsApp reading: *"Good morning Cde Nevari; As per our discussion yesterday, the correct legal process is that you should tender a resignation yourself so that the matter doesn't become an unfair labour practice. The letter should be addressed to the DG and copied to me. This should be done with effect from today not later than 12:00. The content of the letter should indicate that you are tendering your resignation with effect from 31 December 2019 and you have no intention to work from tomorrow till your resignation date."*

- b) At 08:09, the Deputy Minister sent the applicant a second WhatsApp reading: *"Please email the said letter to the employer, i.e DG and send me a WhatsApp."*
- c) The applicant then placed a telephone call to the Deputy Minister. On the applicant's version, the upshot of this discussion was that the Deputy Minister informed him that, despite the applicant professing his innocence, he would be fired.
- d) Although claiming that he was confused and pressurised into doing so, the applicant then drafted a letter of resignation, which was addressed to the DG (by way of email) and read: *"Kindly receive my resignation as the head of Deputy Minister's office effect from 31 December 2019, further note that I will not be returning to the office with immediate effect."*
- e) At 11:38, the applicant took a screenshot of the letter on his laptop and sent it to the Deputy Minister via WhatsApp.
- f) The applicant contends (in his founding affidavit) that the reason for sending this WhatsApp to the Deputy Minister *"was merely to show him the contents of the draft resignation letter"*, which, he says, was not signed, printed out or sent to the DG *"as a way of tendering my resignation"*. He contends further that he did not instruct or request the Deputy Minister to act as his agent to send the screenshot to the DG (see below). The DG (in the respondents' answering affidavit) baldly denies all of this.
- g) The DG goes on to say this in relation to the applicant's WhatsApp of 11:38 to the Deputy Minister: (a) *"I received notification from the Deputy Minister: Tourism of the fact that the applicant tendered his resignation from the Department with effect from 31 December 2019"*; (b) *"[t]he Deputy Minister further advised me that, due to the Internet connection problems experienced by the applicant on that day, he (applicant) was not in a position to transmit his letter of resignation by email"*; (c) *"[t]he Deputy Minister then forwarded to me an unsigned resignation letter addressed to me by the applicant wherein the following is recorded ..."*; (d) *"[i]t would appear as though the letter ... was sent to the Deputy Minister via WhatsApp message by the applicant"*; and (e) *"[a]fter having been advised by the Deputy Minister of the applicant's resignation from the Department, I advised the offices of the Human*

Resources Management (HRM) and Finance to process the resignation accordingly."

h) In his replying affidavit, the applicant pleads that he has no knowledge of (a); denies (b); admits (c) and (d); and notes (e).

i) At 13:13, the applicant sent the Deputy Minister another WhatsApp reading: *"Good day DM, I am of the view that you must advise the DG to prefer charges against me. It won't be possible for me to carry on with life with this injustice. My conscious is refusing to allow me to resign without basis that's cowardice. I am sorry if I am disappointing you but I [am] ready to fight for my freedom."*

j) At 13:44, the Deputy Minister responded in a WhatsApp reading: *"It's not me who should advise the DG on what action to take, I've forwarded your WhatsApp to the DG more than an hour ago. The matter is not between me and you but its between you and the employer."*

k) At 13:45, the applicant responded in a WhatsApp reading: *"I do understand, I was saying it because I don't have a line with him [i.e. the DG]. I am ready to face the consequences of my decisions."*

[11] To complete the chronology:

a) On 8 January 2020, the applicant's attorneys wrote a letter to the respondents requesting the upliftment of the applicant's suspension.

b) On 10 January 2020, the respondents replied, stating that the applicant had resigned from the employment of the Department in December 2018.

c) On 22 January 2020, the applicant's attorneys responded, recording that *"according to our instructions from our client, it is clear that he has never sent or signed any resignation letter to your offices or to his superiors"*.

[12] In relation to the applicant's claim for damages, it was placed on record during argument that the applicant was unemployed for seven months from January to the end of July 2020, and that he was thereafter gainfully employed until the end of his fixed-term contract at the end of May 2024, albeit (in part) at a lesser salary than he earned while employed by the Department. Given that the applicant's damages had not been established under oath, it was agreed that they would be held over for

subsequent determination, in the event of this court finding that the applicant had not actually resigned on 18 December 2019.

Relevant legal principles

[13] Two principles applicable to motion proceedings warrant mention up front. The first is that a court should generally refrain from making findings on the basis of probabilities in such proceedings in the face of any conflicts of fact on the papers.¹ The second is that, given that the applicant seeks final relief by way of motion, the *Plascon-Evans* principles apply.² These principles are aptly summarised by Willis J (as he then was) in *Thebe Ya Bophelo Healthcare Administrators* as follows:³

“[19] ... it is the facts as stated by the respondent together with the admitted or undenied facts in the applicant's founding affidavit which provide the factual basis for the determination, *unless the dispute is not real or genuine or the denials in the respondent's version are bald or uncreditworthy*, or the respondent's version raises such obviously fictitious disputes of fact, or is palpably implausible, or far-fetched or so clearly untenable that the court is justified in rejecting that version on the basis that it obviously stands to be rejected.” (Emphasis added.)

[14] Regarding the law on resignations, Van Niekerk J (as he then was) provides this useful summary in *Sihlali*:⁴

“[11] A resignation is a unilateral termination of a contract of employment by the employee. The courts have held that the employee must evince a clear and unambiguous intention not to go on with the contract of employment, by words or conduct that would lead a reasonable person to believe that the

¹ *BDS South Arica & another v Continental Outdoor Media (Pty) Ltd & others* 2015 (1) SA 462 (GJ) para 62.

² *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E-635C.

³ *Thebe Ya Bophelo Healthcare Administrators (Pty) Ltd & others v National Bargaining Council for the Road Freight Industry & another* (2009) 30 ILJ 1031 (W) para 19.

⁴ *Sihlali v SA Broadcasting Corporation Ltd* (2010) 31 ILJ 1477 (LC).

employee harboured such an intention Notice of termination of employment given by an employee is a final unilateral act which once given cannot be withdrawn without the employer's consent In other words, it is not necessary for the employer to accept any resignation that is tendered by an employee or to concur in it, nor is the employer party entitled to refuse to accept a resignation or decline to act on it. ...

[12] This is not to say that a resignation need not be communicated to the employer party to be effective - indeed, it must, at least in the absence of a contrary stipulation

[13] A resignation is established by a subjective intention to terminate the employment relationship, and words or conduct by the employee that objectively viewed clearly and unambiguously evince that intention. The courts generally look for unambiguous, unequivocal words that amount to a resignation" (Authorities omitted.)

Did the applicant resign on 18 December 2019?

[15] As *Sihlali* makes clear, notice of resignation must be communicated by the employee to his / her employer.

[16] In this case, irrespective of the relationship between the applicant and the Deputy Minister, it is common cause that the applicant was employed by the Department (represented by the DG) and not by the Deputy Minister. There is also no dispute on the papers that the applicant was required to communicate his resignation to "*the employer*" (i.e. the DG). The Deputy Minister's WhatsApp at 08:07 and 08:09 (as well as 13:44) on 18 December 2019 makes this abundantly clear.

[17] In circumstances where it is also common cause that the applicant did not communicate his resignation letter to the DG, the only basis upon which the requirement of communication to the employer can be established, is if it was intended that the Deputy Minister would convey the letter to the DG on the applicant's behalf. The applicant says it was not his intention. While the DG (in the respondents' answering affidavit) denies this, the denial is *bald* and *uncreditworthy*

because it is not confirmed by the Deputy Minister, who is the only one with personal knowledge of the matter (other than the applicant). In the circumstances, this dispute of fact (insofar as it exists) does not stand to be resolved in favour of the respondents based on *Plascon-Evans*; the applicant's version stands.

[18] Allied to this, the DG goes on to attempt to proffer an explanation for why the applicant did not send him the resignation letter, namely that he (i.e. the DG) was *told* by the Deputy Minister that, due to the applicant experiencing Internet connectivity problems on the day in question, the applicant was unable to email the letter to him (see para 10 (g) above). On the face of it, this may have served as something of a basis for inferring that the applicant and the Deputy Minister had an arrangement that the Deputy Minister would forward the letter to the DG on the applicant's behalf, and that upon this occurring, there was effective notice of resignation to the employer. The difficulty, however, is that in the absence of the Deputy Minister having put up a confirmatory affidavit, the DG's version amounts to impermissible hearsay evidence. In circumstances where the applicant denies the version, it stands to be disregarded.

[19] In any event, the applicant says that what he sent the Deputy Minister by way of WhatsApp was only a draft, and that he did so "*merely to show him the contents of the draft resignation letter*" (as opposed to effecting his resignation). Again, the DG's denial is *bald* and *uncreditworthy* because it is not confirmed by the Deputy Minister. In the circumstances, this dispute of fact (insofar as it exists) also does not stand to be resolved in favour of the respondents based on *Plascon-Evans*; the applicant's version stands.

[20] In the premises, on the affidavits before me, I am unable to find that the applicant communicated his resignation to his employer (as required by *Sihlali*). I, accordingly, conclude that the applicant did not validly resign from the employ of the Department.

Order

[21] In the result, the following order is made:

- a) It is declared that the applicant did not tender his resignation to the respondents on 18 December 2019 as alleged by the respondents;
- b) The first respondent shall pay the costs of the application, excluding any costs granted in its favour in relation to an earlier postponement of the matter.

Myburgh AJ

Acting Judge of Labour Court of South Africa

Appearances

For the applicant: Adv M Sibuyi instructed by Mafori Lesufi Inc

For the respondents: Adv M Rantho instructed by the State Attorney