(1) Reportable: No
(2) Of interest to other Judges: No

22 May 2026
Signature Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no:**2026-065157**

In the matter between:

SAMATU OBO DR WILLEM SMITH **Applicant**

and

MEC FOR THE DEPARTMENT OF HEALTH

NORTHERN CAPE NO. **First Respondent**

MR M MLATHA **Second Respondent**

Heard: 25 March 2026

Delivered: 22 May 2026

Summary: An urgent application for declaratory orders that the termination of an employment contract by an employer after an employee's resignation is null and void, and that the employer should be ordered to amend the persal record to reflect the reason for termination as resignation rather than dismissal. Resignation must be on notice unless an employer accepts a resignation with immediate effect.

JUDGMENT

GANDIDZE, J

Introduction

[1] The urgent application by Dr Willem Smith (Smith), assisted by his trade union, the South African Medical Association Trade Union (SAMATU), seeks a rule nisi (i) declaring that the Department of Health Northern Cape's (the Department's) termination of Smith's employment contract on 10 October 2025 is invalid, null and void; (ii) declaring that Smith resigned from the Department's employ on 2 October 2025; and (iii) directing the Department to amend the reason for termination on Smith's persal file from dismissal to resignation.

[2] The Department and the second respondent, Mr M Mlatha (Mlatha), collectively referred to as the respondents, opposed the application. According to the applicants, Mlatha is cited because he was employed as the Acting Head of Department (HOD) at the time of the events leading to Smith's termination. The respondents filed the answering affidavit on 24 March 2026, not by Sunday, 22 March, as required by the notice of motion, and sought condonation. The application was served on them on 19 March 2026. Condonation is not required, but if it is, it is granted.

[3] The respondents also lamented that they had to prepare an answer under extreme time constraints. Had they requested a postponement of the matter to file a supplementary answering affidavit, it would have been granted. Instead, they appeared on the hearing date and addressed the merits of the application.

Background facts

[4] Dr Smith was employed by the Department as a Medical Officer: Specialist Surgeon Grade 2, based at the Dr Harry Surtie Hospital in Upington. On 3 October 2024, he was served with a notice to attend a disciplinary enquiry to answer charges of misconduct, which need not be set out for the purposes of this judgment. On 17 March 2025, he was found guilty and dismissed. On 19 March 2025, he appealed against the sanction.

[5] It took months for the appeal to be decided, even though it ought to have been decided within 30 days.

[6] On 2 October 2025, Smith emailed the then-acting Chief Executive Officer (CEO) to tender his resignation, effective immediately.

[7] On 10 October 2025, Smith was informed that the appeal hearing had concluded and that his dismissal had been confirmed. Subsequently, on 5 November 2025, Smith was issued a certificate of service confirming his dismissal for misconduct.

[8] On 10 December 2025, SAMATU wrote to the Department requesting that Smith's persal record be amended to reflect the reason for termination as a resignation. When this application was lodged on 18 March 2026, no response had been received from the Department.

[9] As the matter was brought as urgent, that issue needs to be determined first.

Urgency

[10] Rule 38 of the Rules Regulating the Conduct of the Proceedings of the Labour Court[1] (Labour Court Rules) addresses urgent applications. The affidavit in support of the application must set out the reasons for urgency and the necessity for urgent relief. Urgency must not be self-created, and an applicant must show that they cannot obtain substantial redress in due course.

[11] The applicants' case on urgency is that 'urgency is self-evident if one has regard to the contents of the founding affidavit.' Such an allegation falls far short of what is required to establish urgency.

[12] The further submission was that Smith 'will suffer severe financial and intangible prejudice due to the unlawful conduct of the First Respondent in withholding the Applicant's remuneration without a just cause'. This case has nothing to do with the withholding of Smith's remuneration. Accordingly, the case authorities cited during oral argument on financial hardship as a ground

[1] *Published*: GN 4775, G. 50608 of 3 May 2024. *Commencement: 17 July 2024* - GN 5038, G. 50929 of 12 July 2024.

for urgency are of no assistance to the applicant's case. The pleadings do not refer to financial hardship but rather to what has been termed a fundamental right to seek employment and provide for a family. Such an allegation does not assist in establishing urgency.

[13] That has to be the end of the assessment of whether the applicants have made out a case for urgency. They have not. Nevertheless, even if the other requirements for urgency are assessed, the applicant's case on urgency is hopeless because any urgency was self-created, having regard to the sequence of events.

[14] Smith was informed that his dismissal was confirmed on 10 October 2025. On that date, Smith knew he had already resigned and, on the applicant's case, therefore could not be dismissed. Despite this, no steps were taken to engage the Department on the issue.

[15] Almost a month later, on 5 November 2025, Smith was issued a certificate of service stating that the reason for termination was dismissal for misconduct. Again, no steps were taken to challenge the Department's records.

[16] More than a month later, SAMATU wrote to the Department requesting that the record be amended to reflect his resignation. Despite not receiving a response for months, no steps were taken to further the matter. It was only on 18 March 2026, three months later, that this application was launched, and it was set down for hearing on 25 March 2026.

[17] Based on that chronology, any urgency perceived by the applicants was self-created. To compound matters, the respondents were expected to provide an answer on a Sunday, so the matter could be heard on a Wednesday. No explanation is provided for why a matter the applicants had been sitting on since October 2025 suddenly became so urgent that papers had to be filed and the matter determined in seven days.

[18] Yet another reason the matter is not urgent is that an applicant must allege and show that it cannot obtain substantial redress in due course. The submission that unless the matter is heard as one of urgency, Smith will suffer

severe financial and intangible prejudice due to the unlawful conduct of the First Respondent in withholding the Applicant's remuneration without a just cause makes absolutely no sense and has been addressed above.

[19] The founding affidavit also alleges that the respondents' failure to amend Smith's persal record is causing unnecessary complications for Smith when applying for future employment and when accessing his benefits. Without more averments, unnecessary complications and the accessing of benefits do not establish urgency.

[20] As there is no urgency, the matter falls to be struck from the roll. However, in this case, the better approach is to dispose of the matter on its merits by determining whether, if this application were to be heard in due course, the applicants have made out a case for the declaratory relief they seek.

[21] Before that, the court must determine whether it has jurisdiction to entertain the claim.

Jurisdiction

[22] To determine whether this court has jurisdiction, it is appropriate to set out the applicants' cause of action. They seek a declaratory order that the letter terminating Smith's employment, issued on 10 October 2025, is invalid, null and void. This is because the letter was issued after Smith had resigned on 2 October 2025, a resignation accepted by the CEO. Smith's resignation had the effect of causing all pending disciplinary processes to cease, and the Department could not terminate Smith's employment when there was no longer an employment relationship between the parties. Consequently, the respondents must be ordered to amend Smith's persal file to reflect that the reason for the termination of his employment was resignation, not a dismissal for misconduct.

[23] The applicants cited several authorities explaining when a resignation occurs. With reference to *Mafika v SA Broadcasting Corporation Ltd*[2], and several

[2] [2010] 5 BLLR 542 (LC).

other decisions, the applicants submitted that a resignation is a unilateral act, that the employer need not accept or concur with the employee's decision, and that the employer is not entitled to refuse the resignation. For that proposition, reliance was placed on *Rosebank Television and Appliance Co Pty Ltd v Orbit Sales Corporation (Pty) Ltd*[3]**.** At the same time, the applicants submitted that Smith's resignation was accepted by the CEO.

[24] As the application did not plead that the court had jurisdiction to hear the matter, Mr Sibeko, for the applicants, was invited to address the court on the issue. He submitted that the court has jurisdiction under section 151(1) of the Labour Relations Act[4] (LRA), which provides that *'The Labour Court is hereby established as a court of law and equity'.* The provision addresses the establishment and status of the Labour Court and cannot be relied upon to establish jurisdiction in this matter.

[25] Mr Sibeko also submitted that this court has general and inherent powers to declare the letter of termination null and void. The submission does not advance the issue of jurisdiction.

[26] The relevant provision of the LRA addressing this court's exclusive jurisdiction is section 157(1), which provides as follows:

> '**Jurisdiction of Labour Court**
>
> (1) Subject to the Constitution and section 173, and except where *this Act* provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters that elsewhere in terms of *this Act* or in terms of any other law are to be determined by the Labour Court.'

[27] Therefore, this court has jurisdiction over a matter if there is a provision in the LRA or any other law that provides that the matter is to be determined by this court.

---

[3] 1969 (1) SA 300 (T).

[4] Act 66 of 1995, as amended.

[28] In *Cibane & Another v Premier, Province of KwaZulu-Natal & Another*[5] *(Cibane),* the court held that, outside the scope of any statutory provision that specifically confers jurisdiction on the court, the Labour Court has no general jurisdiction to determine the unlawfulness of employer conduct[6], and that section 157(1) of the LRA does not confer general jurisdiction on the Labour Court in employment matters[7].

[29] The court also held, with reference to *Gcaba v Minister for Safety & Security & others*[8]*,* that jurisdiction is a matter to be determined in each case by reference to the pleadings and to an enabling statutory provision, such as the LRA or another statute conferring jurisdiction on the court to adjudicate the dispute disclosed by the pleadings.

[30] In this matter, the applicants have alleged that the termination letter is invalid but have not expressly disclosed a cause of action. They do not rely on the LRA or any other law that would confer jurisdiction on this court to hear the application, except to refer to case authorities dealing with resignations. This is insufficient to assert this court's jurisdiction.

[31] The notice of motion refers to the termination of a contract of employment. Section 77(3) of the Basic Conditions of Employment Act[9] (BCEA), provides that:

> '(3) The Labour Court has concurrent jurisdiction with the civil courts to hear and determine any matter concerning a contract of employment, irrespective of whether any basic condition of employment constitutes a term of that contract.'

[32] However, the applicants do not rely on a term of the employment contract that has been breached and that they seek to enforce. That would have established the court's jurisdiction.

---

[5] (2025) 46 ILJ 2587 (LAC).

[6] With reference to *Steenkamp and Others v Edcon* CC (*National Union of Metalworkers of SA Intervening)* (2016) 37 ILJ 564 (CC) at para 106.

[7] With reference to *Baloyi v Public Protector & others* (2021) 42 ILJ 961 (CC) at para 24.

[8] 2010 (1) SA 238 (CC); (2010) 31 *ILJ* 296 (CC).

[9] Act 75 of 1997, as amended.

[33] However, to the extent that it may be contended, though not expressly stated in those terms, that the applicants' claim is one in terms of section 77(3) of the BCEA, because it relates to a contract of employment, a matter over which this court has jurisdiction, the parties' contentions are addressed next.

The parties' contentions on the merits

[34] To recapitulate, the applicants contend that Smith was dismissed, that he appealed the sanction, and that, before the appeal could be finalised, he resigned on 2 October 2025, a resignation the CEO accepted. The Department then sought to dismiss him on 10 October 2025. The applicants contend that the resignation preceded the dismissal and that the persal record must reflect this. The applicants also blame the respondents for failing to finalise the appeal within 30 days, as required by the Disciplinary Procedure.

[35] The respondents raised two preliminary issues.

[36] In the first instance, they alleged defective service of the application (i) in relation to section 35 of the General Law Amendment Act[10], which requires 72 hours' notice of the application or condonation before a *rule nisi* could be issued against the respondents; (ii) that although the respondents filed an answering affidavit, service of the application was not proved as required by the Labour Court Rules; and (iii) that the application was not served on the office of the State Attorney as required.

[37] In the second place, the respondents contend that Mlatha, cited in his personal capacity, was misjoined, as no relief is sought against him, or, alternatively, that the employer, the Department, and the functionaries responsible for persal implementation and benefits were not joined.

[38] In the view that I take of the merits, it is unnecessary to decide these preliminary points.

[39] As regards the merits, the respondents' main contention, as I understood it, is that the disciplinary code provides that, where misconduct is established, the

[10] Act 62 of 1955, as amended.

chair must impose a sanction, and that, in this case, the sanction of dismissal was imposed on 17 March 2025. Smith lodged an appeal, which was finalised on 30 September 2025. The appeal outcome letter dated 10 October 2025 states that the sanction 'remains', meaning the dismissal predated the resignation on 2 October 2025. Although the appeal outcome was communicated after the resignation on 2 October 2025, the appeal itself was finalised on 30 September 2025, before the resignation. The respondents rely on what they refer to as the '*Oudekraal principle'*[11], that a decision stands until it is set aside.

[40] In the alternative, the respondents submit that Smith resigned on 2 October 2025 with immediate effect, despite the employment contract requiring 30 days' notice. Smith was not entitled to unilaterally terminate the employment relationship with immediate effect, thereby placing himself beyond the reach of the appeal process. He was bound by the notice period, and the appeal outcome was communicated during that period. Therefore, the appeal outcome, that dismissal remains, preceded the resignation.

[41] In the further alternative, the respondents submitted that Smith's resignation on 2 October 2025 may properly be regarded as an abandonment of the appeal process, in which case the *status quo* of dismissal is restored.

[42] The respondents admitted that the finalisation of the appeal took longer than the prescribed 30 days but blamed the delays on Smith's representatives, who submitted an incomplete appeal file record as required and had to rectify it.

[43] On all those grounds, the respondents submit that there is no basis to amend the persal system to reflect the reason for termination as a resignation. The respondents further submitted that, at best, there could be a debate about the effective date of termination, which is to be reflected in the persal system.

Evaluation

[11] *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* 2004 (6) SA 222 (SCA).

[44] Although the application is drafted on the basis that a rule nisi was sought, Mr Sibeko confirmed that final relief was sought. The correct position is that the applicants sought declaratory orders having final effect.

[45] In considering the matter, the court will also take into account that the applicants did not file a reply affidavit, with the consequence that the respondents' version, which was not denied, will be accepted.

Could Smith resign with immediate effect?

[46] The applicants submitted that Smith resigned with immediate effect on 2 October 2025 and that, as resignation is a unilateral act, the employer's acceptance or rejection was not required.

[47] The respondents submitted that even if Smith resigned on 2 October 2025, he was required to serve the 30-day notice period, so the resignation could not have taken effect immediately. This submission was an alternative, but the court addresses it first for reasons that will become apparent shortly.

[48] It is common cause that Smith resigned, with immediate effect, on 2 October 2025. The question is whether he was entitled to do so.

[49] The applicants alleged that the CEO accepted Smith's resignation on 2 October 2025. As the respondents correctly pointed out, no evidence of acceptance of the resignation was provided. One would have expected the applicants to attach the relevant email correspondence from the CEO to their application, but they did not. Nor did the applicants file a confirmatory affidavit from the CEO. The version that the resignation with immediate effect was accepted by the CEO is rejected.

[50] The applicants contend that it was unnecessary for the resignation with immediate effect to be accepted, as a resignation is a unilateral act. They cited several authorities in support of their contention, but failed to cite the most recent binding case authority, *Standard Bank of South Africa Limited v*

Chiloane[12] (*Chiloane*), which Mr Thumbathi referred to in oral argument. In reply, Mr Sibeko did not address the court on a judgment that was fatal to his main submission.

[51] In *Chiloane*, the employee resigned with immediate effect on the same day she received notice to attend a disciplinary hearing, without giving the required notice. She held the view that the disciplinary hearing could no longer proceed, given the resignation. The employer took a different view and proceeded with the disciplinary hearing. The employee attended the hearing to raise the preliminary point that she had resigned. When the chairperson dismissed it, she walked out, and the hearing proceeded in her absence. She was dismissed and filed an application in this court seeking, *inter alia*, orders declaring that the decision to dismiss her after she resigned was null and void. This court granted the order, but the decision was reversed on appeal.

[52] On appeal, the court held that employment relationships are governed by an employment contract, by statute, or by both, and that one of these sources will often stipulate the notice period. In that case, the employment contract provided for four weeks' notice of termination. The court held as follows:

> '[14) It is common cause that the employer and employee had agreed that one would give the other four weeks' notice of termination of their employment contract. In these circumstances, for the employer or the employee to lawfully terminate their employment relationship, one had to give the other four weeks' notice. The party receiving the notice of termination which does not comply with the agreed notice period may, however, agree to forgo that term of the agreement. Where there is no agreement unless it is expressly stated that there is no need to serve the four weeks notice, it has to be complied with in terms of the contract.

[12] [2021] 4 BLLR 400 (LAC); 2020 JDR 2830 (LAC).

[15] The argument that where an employee gives notice of termination by way of resigning with immediate effect, such an employee cannot be compelled to continue working for the employer because resignation is a valid unilateral act that comes into effect on the date the employee dictates that it will come to an end is misconceived.

[53] Therefore, the court held that the fact that a resignation is a unilateral act does not entitle an employee to resign without giving the required notice.

[54] The court went further, commenting on decisions of this court that held otherwise, with the leading one being *Lottering & others v Stellenbosch Municipality*[13], and held as follows:

'[18] *Lottering* and the judgments that follow similar arguments are clearly wrong. Where termination of employment is in breach of a contractual term which requires the giving of notice or, absent such term, where termination of employment is in breach of the BCEA unless there is an acceptance by the party receiving the non-compliant notice of termination, the terms of the contract or the statute remain valid and binding. This is so "*since repudiation terminates the contract only if the innocent party (here the employer) elects not to act on it.'*

[55] The court also went on to say this:

'[21] In the circumstances, where a contract prescribes a period of notice the party withdrawing from the contractor or resigning is obliged to give notice for the period prescribed in the contract. The contract and the reciprocal obligations contained in it only terminate or *take effect* when the specified period runs out. Alternatively, absent a contractual term the parties are bound to the notice period provided in the BCEA.

[22] In this matter, the employee's narration that her resignation was with "immediate effect" was of no consequence because it did not comply with the contract which governed her relationship with her employer and the employer was thus correct to read into the resignation a four week notice period within which period it was free to proceed with the disciplinary hearing.'

[13] (2010) 31 ILJ 2923 (LC); [2010] 12 BLLR 1306 (LC).

[56] Therefore, a resignation must be given with notice unless the employer accepts it without notice. In the present matter, the applicants failed to prove their contention that the CEO accepted Smith's resignation with immediate effect.

[57] In adopting this approach, the court in *Chiloane* referred to two minority decisions of the Constitutional Court. The first is *Toyota SA Motors (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and others*[14] *(Toyota SA Motors),* in which the court held that an employer may not discipline an employee who has validly resigned[15], and that a resignation takes effect on a specific date[16].

[58] Therefore, a resignation will be effective if it is valid, which means it is given with the required notice, and the date of termination will depend on the required notice period.

[59] The second judgment is *Steenkamp & Others v Edcon Ltd (National Union of Metalworkers of SA Intervening)*[17] (*Steenkamp & Others).* The matter concerned notices of termination of employment in a section 189A retrenchment process. The court held as follows:

> '[64] The provision's reference to 'notice to terminate' is, as NUMSA contended, redolent of the language of the contractual termination of employment, rather than merely of statutory unfair dismissal. Under the common law of contract, conduct by the employer that constitutes a repudiation of the contract does not, of itself, put an end to the contract. What it does is to vest the employee with an election. She can stand by the contract. Or she can choose to accept the employer's repudiation and bring the contract to an end.
>
> [65] But at common law, that choice is the employee's. Except where summary dismissal is warranted, the unilateral act of the employer in

[14] 2016 (3) BCLR 374 (CC).

[15] Ibid at para 142.

[16] Ibid para 144.

[17] (2016) 37 ILJ 564 (CC).

terminating the contract, whether by notice or other conduct, does not without more bring an end to the contract of employment. The same applies to an employee who gives short notice in violation of the contract: he or she may be obliged to serve out the notice period. In neither case does the unlawful repudiation of the contract have to be accepted by the other party.

[68] It is this common-law location of the statute as a whole that the language of s 189A invokes. The same applies to the BCEA. Under that statute, it is well accepted that a dismissal on short notice is not effective to terminate the contract of employment. When either employer or employee seeks to terminate, the BCEA requires that each give notice in terms of s 37. If either party does not, the contract of employment continues to subsist, affording both employee and employer a range of statutory remedies to enforce it.

[69] During the hearing, counsel for Edcon was asked whether, if the provisions of s 189A had appeared in the BCEA, rather than in the LRA, as a 'bolt-on' to s 189, its stipulated notice periods would have to be considered peremptory. His answer was Yes. And it had to be Yes, for it would have been plain beyond contest, within the BCEA, that the provision's notice requirements, like those of s 37, are peremptory, and that notice given in violation of them is null and void...

[60] Therefore, on the authority of two minority Constitutional Court judgments and a Labour Appeal Court judgment, employees cannot resign with immediate effect to avoid disciplinary action. If they do so and the employer elects to hold them to the notice period, the employment contract subsists until the notice period ends.

[61] Applying these principles to the facts of this matter, because there was no acceptance of Smith’s resignation with immediate effect, Smith’s resignation could only take effect on 2 November 2025, which is when the 30-day notice period was due to expire.

[62] The next question is which came first, the dismissal or the resignation?

Dismissed or resigned?

[63] In the papers or oral argument, both parties referred to a Disciplinary Code but provided no further details. Reference was made to Resolution No 1 of 2003. As the court was not provided with a copy, it noted during judgment writing that the full title is "Resolution 1 of 2003 Amendments to Resolution 2 of 1999: Disciplinary Code and Procedures for the Public Service" (Resolution 1/2003).

[64] Clause 7.4.c of Resolution 1/2003 provides that, where a sanction is imposed by the chair of a disciplinary hearing, 'The employer shall not implement the sanction during an appeal by the employee'. In this case, Smith was dismissed on 17 March 2025, and he filed an appeal on 19 March 2025. Accordingly, the dismissal sanction is not implemented until the appeal is finalised.

[65] Another relevant provision is clause 8.7, which provides that once the appeal authority has decided:

> 'The employer shall immediately implement the decision of the appeal authority. Where the appeal authority decides to reduce the sanction or confirm the outcome of the disciplinary proceedings (e.g. dismissal cases), the sanctions will be implemented by the employer from a current date.'

[66] Therefore, where the disciplinary chairperson's decision to dismiss is upheld, the implementation date of the sanction is the 'current date'. In this case, the appeal authority decided on Smith's dismissal on 30 September 2025, with the consequence that the effective date of the dismissal is that 'current date'.

[67] Unaware of the special dispensation for public service employees set out in Resolution 1/2003, the court, during oral argument while attempting to establish the date of dismissal, raised the issue of section 190 of the LRA. This proved irrelevant in light of clause 8.7 quoted above, which addresses the date of implementation of a dismissal.

[68] The appeal outcome records that the appeal decision was made on 30 September 2025. That outcome was communicated to Smith on 10 October 2025. Therefore, Smith's dismissal was implemented on 30 September 2025.

This occurred before the resignation took effect on 2 November 2025. Accordingly, there is no need for the respondents to amend Smith's persal record to reflect resignation as the reason for termination of employment.

[69] This finding makes it unnecessary to decide whether the *Oudekraal* principle applies to the facts of this matter, except to note that this is doubtful, given that the decision to terminate Smith's employment was not unlawful and therefore would not have required a judicial review to set it aside.

[70] For completeness, it cannot be said that Smith abandoned the appeal process upon his resignation on 2 October 2025, as the appeal outcome was already available on 30 September 2025.

[71] As far as the court could establish, there is one other judgment of this court by Van Niekerk J (as he then was), that dealt with a matter with similar facts, in *South African Medical Association Trade Union obo Dr H Rikhotso v Member of the Executive Council: Department of Health Limpopo Province and Others*[18]**.**

[72] In that matter, Dr H Rikhotso (Rikhotso) was subjected to a disciplinary hearing. Before the disciplinary outcome could be issued, he resigned with 30 days' notice, expiring on 30 November 2022. On 18 November 2022, Rikhotso was advised of the disciplinary outcome, namely that he had been dismissed. He appealed the decision, which meant the dismissal had to be put on hold pending the appeal. Rikhotso was also informed that his resignation letter had been received, but that the notice period would be extended to allow the appeal process to be finalised. He rejected this and approached the court for orders, *inter alia*, that the extension of his notice period was unlawful and that the employer amend its records to reflect that the reason for termination was resignation, not dismissal. By the time the application was heard, the appeal had been finalised and Rikhotso's dismissal had been confirmed.

[18] [2023] 6 BLLR 575 (LC); (2023) 44 ILJ 1779 (LC).

[73] In dealing with the application, the court also raised the issue of its jurisdiction to hear the matter, but, reluctantly, accepted that it had jurisdiction after counsel for the applicant invoked section 77(3) of the BCEA during oral argument.

[74] The first issue the court addressed was whether the employer could unilaterally extend the notice period. The court held that it could not, reasoning that the notice period is determined by the contract, an applicable regulatory measure, or a collective agreement, and that the contract of employment terminates at the end of the notice period.

[75] On the order directing the employer to amend its records to reflect resignation as the reason for termination, the court, inter alia, held as follows:

> '[11] …The applicant's submissions confuse the existence of a dismissal with its implementation. The filing of an appeal against the sanction issued by the presiding officer did no more than delay the implementation of the sanction. Neither clauses 7.4.c nor 8.7 of the collective agreement support the construction that once a sanction is the subject of an appeal, it is expunged or somehow ceases to exist, pending the outcome of the appeal. The sanction remains on record; its implementation is suspended until the appeal authority makes a decision. If and only if the appeal authority upholds an appeal against a sanction of dismissal is the dismissal then expunged from the employee's record. It is common cause in this instance that the appeal authority dismissed the appeal and upheld the applicant's dismissal.'

[76] Therefore, the court held that the dismissal date remains as imposed by the chairperson, but the dismissal is implemented only when the appeal has been determined. This court agrees with this interpretation of Resolution 1/2003.

[77] The court also held that Rikhotso's application was intended to conceal the fact that he had been dismissed. As with Rikhotso's application, the current application by Smith, represented by the same union that represented Rikhotso, was nothing but an attempt to conceal the fact that Smith had been dismissed.

[78] The applicants also made submissions on the requirements for final relief. It was submitted that, as a family man, Smith has a clear right to seek employment and provide for his family; that the respondents had no legal basis for refusing the request to amend Smith's persal; and that, by refusing to amend the persal record, the respondents were in breach of Smith's fundamental right; that Smith had no alternative remedy, as only this court can offer declaratory relief; that unless the persal record was amended, Smith would continue to suffer irreparable harm when seeking employment, causing further prejudice to Smith's livelihood. As the applicants sought declaratory orders, it was unnecessary to address the requirements for a final interdict as they did.

[79] The applicants have not made out a case for the declaratory orders sought.

Costs

[80] The applicant sought costs in the event of opposition.

[81] The respondents sought costs against the applicant on a punitive scale, contending that the matter should not have been brought as urgent, as there were no grounds for urgency. Although there was no urgency, the application will be disposed of on its merits. The applicants have been unsuccessful, but because this is a labour matter in which costs do not follow the result and are awarded in accordance with the requirements of fairness as set out in section 162 of the LRA, an appropriate order is that each party pay its own costs. In arriving at this conclusion on costs, the courts considered that the applicants' main contention was settled law, but that there was a paucity of authorities interpreting the cited provisions of Resolution 1/2003.

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

Order

1. Condonation for the late filing of the answering affidavit is granted.

2. The matter is not urgent.

3. The application is dismissed.

4. Each party to pay its own costs.

_____

T. Gandidze

Judge of the Labour Court of South Africa

Appearances:

For the Applicant	Advocate Z Sibeko
Instructed by	Ndobela and Associates Inc
For the Respondent	Advocate D Thumbathi
Instructed by	Kopano Mothibi Attorneys