Can an employee unilaterally withdraw his or her resignation?

This was the question the court had to answer in the matter of Monareng Jeffrey Mohlwaadibona vs DR JS Moroka Municipality. The Applicant resigned on the 1st of April 2021 with immediate effect due to ill health. On the 15th of April 2021, however, after having miraculously recovered, he requested to withdraw his resignation. Having received no response from his employer, he went back to work on the 19th of April 2021. He was told that the municipal manager had not accepted his withdrawal of resignation and that he should not have reported for duty. In fact, on the 15th of April, the municipal manager had already rejected his withdrawal.

The court looked at what resignation entails and stated that it is a voluntary act that ends the employment relationship. A resignation takes effect once communicated to an employer, and it is incapable of being withdrawn unless an employer consents thereto. The Applicant argued that the municipal manager was not the employer to whom the resignation must be communicated.

In a decision made by AJ Maya in the matter of ANC v Municipal Manager, George Local Municipality and others, the court dealt with the provisions relating to the resignation of a councillor covered by section 27 (a) of the Municipal Structures Act. The court's interpretation of the plain writing of the provisions was that the legislature did not identify the party within the municipal council upon whom the resignation must be served to be effective; hence any superior to an employee is sufficient as a recipient of a resignation.

The court dismissed the interim order, which had the effect of getting The Applicant reinstated. The court furthermore rejected his withdrawal which was not consented to.

Therefore, it is important to note that once an employee resigns, he/she cannot withdraw the resignation without the employer's consent. Furthermore, the fact that an employee did not serve his/her notice period after the resignation does not mean that the resignation is automatically terminated.

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