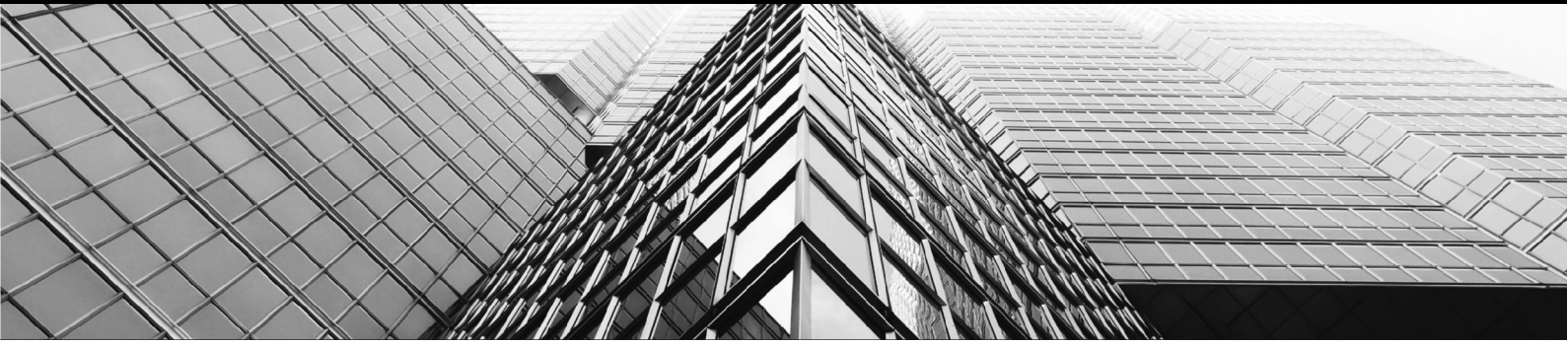




EMPLOYMENT

When silence becomes complicity: Constructive dismissal, workplace bullying and the cost of doing nothing

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Constructive dismissal remains one of the more difficult claims to prove in South African labour law. Employees must do far more than demonstrate that the workplace was unpleasant or that their relationship with management had deteriorated. The legal threshold is a demanding one: the employer must have made continued employment objectively intolerable.

The recent CCMA decision in *Ramugondo v Rand Water* provides an important reminder that employers can cross that threshold not only through active misconduct, but also through a failure to intervene when workplace bullying is allowed to flourish.

The employee had initially enjoyed a positive working relationship with her manager. She was selected to attend executive meetings, received praise from senior leadership and appeared to have a promising future within the organisation. That changed dramatically within a matter of months.

The commissioner accepted evidence that the employee was systematically undermined by her line manager. Work was taken away from her and allocated to her graduate. She was excluded from meetings, publicly criticised in front of colleagues and clients, labelled incompetent and repeatedly humiliated. Her manager bypassed her entirely, communicated through her subordinate and created situations where she was deliberately set up to fail. The evidence painted a picture of sustained psychological erosion rather than isolated incidents of poor management.

Importantly, this was not simply a personality clash. The employee attempted to resolve matters internally. She raised concerns directly, lodged a formal grievance and participated in the employer's internal processes. However, those processes moved slowly. Meetings were delayed, prescribed timeframes were not met and the conduct complained of continued unabated while the grievance remained unresolved. By the time the employer eventually escalated the matter, the employee had already resigned. This proved decisive.

Relying on the Constitutional Court's decision in *Strategic Liquor Services v Mvumbi NO*, the commissioner reaffirmed that the test for constructive dismissal is not whether resignation was literally the employee's only option. Rather, the question is whether the employer made continued employment objectively intolerable. That assessment requires consideration of the employer's conduct as a whole, viewed reasonably and objectively.

The commissioner had little difficulty concluding that the manager's conduct was 'belittling, humiliating, degrading, cruel, uncalled for and completely unbecoming of a senior manager'. Significantly, the employer was aware of the employee's complaints and the deteriorating

working environment but failed to respond with sufficient urgency. In the commissioner's view, it was this combination of persistent managerial misconduct and organisational inaction that ultimately destroyed the trust relationship between employer and employee.

One aspect of the award is particularly noteworthy. Employers frequently defend constructive dismissal claims by arguing that employees resigned before internal procedures had been completed. Rand Water advanced precisely that argument, pointing out that another employee who had lodged a similar grievance was eventually transferred to another department. The commissioner was unpersuaded.

By the time the grievance eventually reached its final stage, the employee had already reached her breaking point. The employer's own delays had contributed to that outcome. An employee who has exhausted the remedies reasonably available to them cannot be expected to endure ongoing abuse indefinitely while waiting for a process that shows little sign of reaching a conclusion. Internal grievance procedures remain important, but they cannot become an excuse for organisational paralysis.

The remedy is equally significant. Rather than awarding compensation, the commissioner ordered reinstatement. Although constructive dismissal cases often result in compensation because the employment relationship has irretrievably broken down, the commissioner found that the real source of the intolerable conditions was the employee's manager rather than the employer itself. Since another employee had already been transferred away from the problematic reporting line, there was no reason the applicant could not similarly be placed elsewhere within the organisation. Reinstatement was therefore both practical and appropriate.

For employers, the lessons are clear. Workplace bullying is not merely an interpersonal issue or a leadership challenge. Left unchecked, it can expose an organisation to significant legal risk. More importantly, employers cannot rely on the existence of grievance procedures if those procedures are allowed to stagnate while the complained-of conduct continues. Policies do not protect employers; prompt, effective intervention does.

The message from *Ramugondo* is a simple but important one. Constructive dismissal is rarely established by a single incident. It is often the cumulative effect of persistent misconduct, organisational indifference and delayed intervention. When employers know that an employee is being subjected to ongoing humiliation and fail to act decisively, silence itself can become part of the intolerable working environment.



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