

# New Labour Court decision on constructive dismissal sets high standard for intolerability

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16 Oct 2020

In the recent judgment of *Gold One Limited v Madalani and Others* [2020], the Labour Court confirmed that intolerability is a high threshold in constructive dismissal matters. Intolerability is more than a working environment or working under employment conditions that are difficult, unpleasant or stressful.



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## Facts

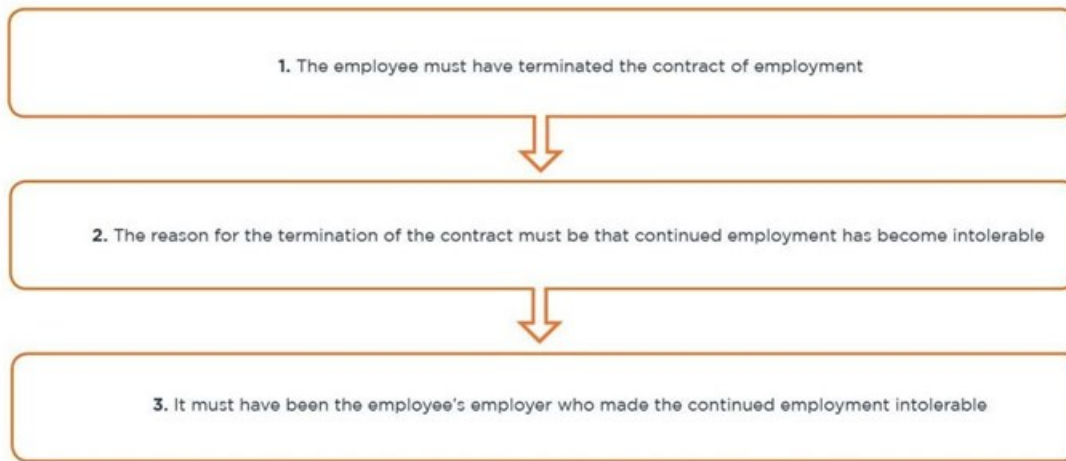
In this matter, the employee was employed by a mining company as a contract manager. Consequent to a commercial merger, the employee was relocated to a different province and received a relocation allowance. The employee was transferred on the same terms and conditions of employment.

After the transfer, the employee's direct supervisor noticed that the employee was not adhering to the employer's policy on time keeping. The supervisor later requested the employee to participate in a formal counselling session facilitated by the human resources department. After the session, there was an exchange of correspondence between the employee and supervisor. The employee eventually claimed that the session amounted to a clear attempt by the employer to undermine the contract of employment and to make the employee's continued employment intolerable.

The employee then elected not to report for duty and referred an unfair dismissal dispute to the CCMA claiming constructive dismissal.

## Key legal principles

The Labour Court restated a number of key legal principles on constructive dismissal. The court said that there are three requirements that need to be proven in order for constructive dismissal to be established -



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The test for constructive dismissal is an objective one. The evidence must show that the conduct of the employer towards the employee, viewed objectively, is such that the employee could not reasonably be expected to cope with. Resignation must be a reasonable step for the employee considering the circumstances of the matter.

Intolerability is a high threshold to meet. Intolerability is more than a working environment or working under employment conditions that are difficult, unpleasant or stressful. The Labour Court further expanded on the concept of intolerability in holding that it

*“ entails an unendurable or agonising circumstance marked by the conduct of the employer that must have brought the employee's tolerance to a breaking point. ”*

On the facts of this matter, the Labour Court found that the employee failed to show that the employer was to blame for making her continued employment intolerable. The employee had suitable alternative remedies and mechanisms that were available to her to resolve the cause of her resignation.

## ABOUT THE AUTHOR

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