

Could Zuma approach the Employment Tribunal?

 By [Johan Botes](#)

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With Jacob Zuma finally announcing his resignation from the presidency following pressure from the ANC National Executive Committee to do so or face a motion of no confidence, the question arises on his possible legal remedies should he feel aggrieved at being compelled to vacate his office and official residence. Is it possible that our highest citizen could approach the employment tribunal to challenge the fairness of his departure?



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The South African Constitution guarantees every employee the right to fair labour practices. The Labour Relations Act gives effect to this in that it provides a statutory right against unfair dismissal. Employees who wish to challenge the fairness of their employment termination may approach the statutory employment tribunal, the Commission for Conciliation, Mediation and Arbitration. This free service allows the CCMA to consider evidence relating to the procedural and substantive fairness of such a termination. If the CCMA concludes that the employer acted unfairly, it may order the reinstatement or re-employment of the employee, or award compensation of up to 12 months' remuneration.

Could we thus see a situation where Zuma lodges a dispute at the CCMA to be reinstated to his position? If Parliament removes him, would that not constitute a dismissal under the LRA which would allow him to challenge the fairness of his removal? If he resigns, could he not (like many disgruntled ex-employees) suggest that he was forced to resign as his employer made continued employment intolerable? Would the CCMA be able to hear such his claim of constructive dismissal?

The ticket for access into the CCMA door is an employment relationship. Only employees may claim the protection against unfair dismissal. If you do not fall within the definition of an "employee" then you cannot be dismissed from employment - no dismissal; no possible claim of unfair dismissal. But why should the President not be seen to be an employee? Our tribunal and labour courts have generously interpreted the definition of "employee" in the past to include sex workers (*Kyle v CCMA*) and employees with expired work visas (*Discovery v CCMA*). Should it not come to the assistance of the President as well?

In Parliament of the RSA v Carlton the Labour Appeal Court considered whether Members of Parliament were employees for the purpose of whistleblowing under the Protected Disclosures Act. The LAC reasoned that MPs hold office, swear an oath of faithfulness to the Republic and obedience to the Constitution, had a unique and specific statutory right to remuneration, are subject to a code of conduct and are elected to office. It ridiculed the thought of an MP approaching the Labour Court after losing her seat post an election. It concluded that MPs are thus not employees for the purpose of either the LRA or PDA.

Zuma would thus not be entitled to approach the CCMA should he feel aggrieved at having to vacate his office.

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