



## CONSTRUCTIVE DISMISSAL

Constructive dismissal occurs when an employee terminates the employment contract because the employer made the working environment intolerable due to its action(s) or omission(s). The resignation is not voluntary, in the case of *Pretoria Society for the Care of the Retarded v Loots* the first part of the rubric is whether the employee had no other motive for the resignation.

The rest of the test is set out by Adv. Grogan SC in *CWU obo Marele and Glass Centre obo Rudi*, is as follows:

1. Did the employee intend to bring an end to the employment relationship?
2. Had the working relationship become so unbearable, objectively speaking, that the employee could not fulfil his obligation to work?
3. Was the intolerable situation created by the employer?
4. Was the intolerable situation likely to endure for a period that justifies termination of the relationship by the employee?
5. Was the termination of the employment contract the only reasonable option open to the employee given the circumstances?
6. Was an attempt to resolve the situation made before resignation?

All the above questions need to be answer in the affirmative for an Applicant to achieve the criteria set out by this type of dismissal.

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