

Employment Law

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SOUTH AFRICA

Fixed-term contracts and the termination of third-party service relationships



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Fixed-term contracts and the termination of third-party service relationships

In *Ngobeni v Bidvest Protea Coin* (Case No. JS439/22) [2025] ZALCJHB 203 the Labour Court had to determine whether the termination of a security guard's employment amounted to a lawful termination of a fixed-term contract on the occurrence of a specific event or constituted an automatically unfair dismissal.

The applicant asserted that his employment ended solely because of his age and thus violated section 187(1)(f) of the Labour Relations Act 66 of 1995 (LRA).

The respondent maintained that Ngobeni's employment legitimately terminated in line with the fixed-term contract, which was expressly tied to a service contract that had terminated.

The matter raised a key debate regarding the legitimacy of 'automatic termination' clauses in fixed-term contracts, especially when those clauses are tied to third-party or client decisions. In particular, the court had to scrutinise whether an employer can circumvent statutory dismissal protections by attributing the end of employment to an external event (namely, the cancellation or expiry of a client-service relationship).



Facts

Ngobeni was employed as a security officer under a fixed-term contract that explicitly linked his employment to the duration of a service agreement with a client. Following the client's decision to discontinue its contract in March 2022, Ngobeni was informed that his employment would terminate automatically. Ngobeni alleged that the reliance on the 'automatic termination' clause of the fixed-term contract was merely a pretext to circumvent the dismissal protections under the LRA.

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Discussion

Fixed-term contracts provide flexibility to employers by making the continued existence of the contract conditional upon an uncertain future event (e.g. completion of a specified task or project) or a certain future event (i.e. a date). An employee is not dismissed when the contract and, therefore, employment ends based on the occurrence of the specified event or date.

However, although it is possible for fixed-term contracts to include automatic termination provisions, such as termination of service agreements at the instance of a third party, an employer cannot use such provisions to contract out of statutory unfair dismissal protections (under the LRA).

A legitimately fixed date or event may effectively end a contract, but an automatic termination clause should not limit an employee's right to claim against an unfair dismissal (or then, the protections and rights afforded in the LRA).

The legal position is the following: A court must determine whether – in the circumstances of a particular case – the clause was intended to circumvent the fair dismissal obligations imposed on the employer. In this regard, the following is relevant:

- The wording of the clause and the context of the entire agreement.
- The relationship between the fixed-term event and the purpose of the contract with the client.
- Whether it is left to the client to choose who is to render the services under the service agreement.
- Whether the clause is used to unfairly target a particular employee by either the client or the employer.
- Whether the event is based on proper economic and commercial considerations.



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Application of the law to the facts

The court examined whether the cause of termination was truly the expiration of a legitimate fixed-term arrangement or whether the respondent had inserted a device to circumvent the LRA. The court found that the 'automatic termination' clause handed the power of termination to a third party's decision and confirmed the position that a contract duration *"linked to the supply of work contracts by clients cannot be construed to equate to the occurrence of a 'specified event'"*. The court raised its concern against contractual provisions allowing employers to negate dismissal protections.

The court concluded that the termination of Ngobeni's fixed-term contract was, in fact, a dismissal and not a mere non-renewal of a fixed-term contract. The court found that the hiring of employees on such a basis constituted nothing more than an attempt to sanction an automatic termination of employment under the guise of a fixed term based on the potential for an operational risk materialising (i.e. an 'automatic' retrenchment).



Key takeaways

A fixed-term employment contract linking the continuation of employment to the 'whim' of a third party and permitting an employer to avoid engaging in retrenchment consultations can be invalid if it seeks to circumvent an employee's right not to be unfairly dismissed.

An employer that attempts to rely on flimsy or pretextual reasons to justify dismissal may face liability for unfair dismissal.

**JJ van der Walt
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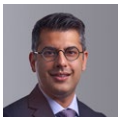
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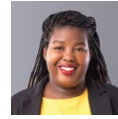
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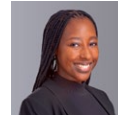
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