

Event-defines fixed-term contracts

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Employees are often employed in terms of fixed-term contracts for the purpose of completing a specific project. If the project consists of multiple phases and employees are required to complete a specific phase rather than the entire project then this should be made clear in their contracts of employment.



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If the fixed-term contract is worded broadly so as to terminate upon completion of the project then any prior termination by the employer will constitute a dismissal, the fairness of which may be disputed. An employer may not decide, in such circumstances, what is meant by the completion of the project when objectively the project is still continuing.

Court's decision

In the case of *Kusokhanya Electrical Construction CC v Hlatwayo NO and Others* (JR 875/2012) [2013] ZALCJHB 227 (16 September 2013), the employees in question had been employed on a fixed-term basis to attend to the electrification of 1,192 households.

The duration of the fixed-term contracts was defined as terminating on completion of the electrification project. After 490 households were electrified, the employer terminated the employees' contracts citing "downsizing" as the reasons therefor.

The employees disputed the fairness of their dismissal and approached the CCMA. The commissioner found that their dismissal was unfair because the project had not been completed when they were dismissed. Indeed, new employees had subsequently been employed to complete the project. The employer applied to the Labour Court for a review of the arbitration award. In its application, the employer argued that the termination clause of the employment contract should be interpreted so as to refer only to the completion of phase one of the project.

The court rejected this argument. It stated that, if the intention of the employer was to limit the term of the contracts of employment to specific phases of the project then the contracts of employment should have stated so.

The court found that on a plain reading of the contracts of employment, termination of employment would only occur upon completion of the project as a whole. There was no reference to particular phases and the employer was precluded from leading contrary evidence outside of the written contract.

The court affirmed that automatic termination clauses in contracts of employment should be interpreted circumspectly as they would normally prevent the employee from claiming unfair dismissal protection in terms of the Labour Relations Act 66 of 1995 . The court held that such clauses should be as clearly defined as possible.

The court held further that it was the conduct of the employer that had brought the employment contracts to an end, rather than the operation of the automatic termination clause. The employer's review application was dismissed.

Importance of the case

If an employee is employed on a fixed-term basis until the completion of a specific task, then this must be clearly spelt out in the contract of employment.

ABOUT JACQUES VAN WYK

Jacques van Wyk is a director in Labour and Employment Law at Werksmans Attorneys. He was named as a recommended lawyer in Labour & Employment by the Legal500 (2010-2012), and co-authored 'Labour Law in Action - A Handbook on the new Labour Relations Act - 1997' with Frances Anderson. Jacques specialises in commercial employment transactions arising during mergers and acquisitions, corporate restructures, executive employee terminations of employment, drafting employment contracts and letters of appointment; disciplinary codes and procedures; and grievance procedures.

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