

LOM Business Solutions t/a Set LK Transcribers/lr

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J2252/06

(NOT REPORTABLE)

In the matter between

10 JEMINA MOOKENG

Applicant

and

TSHWANE UNIVERSITY

Respondent

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J U D G M E N T

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PILLAY D, J: This is an application in which the applicant seeks firstly an order *inter alia* declaring her disciplinary inquiry to be defective and secondly, damages for alleged breach of a fixed term contract, amongst other relief.

20           The applicant was employed in terms of a fixed term contract, which commenced on 18 February 2003 and endured for three years until 17 February 2006. She contends that this contract was renewed on 27 February 2006. In support of her contention, she relies on an email drawn from the respondent's webmail, which reads as follows:

“Subject: Temporary workers contracts extended.

The executive management committee (EMC) has decided to extend the current contracts of all temporary workers until further notice, subject to a 30-day notice period. This decision taken at the EMC meeting today (Monday 27 February) will allow the Institution the time it needs to address the reduction of its salary account in a comprehensive and compassionate manner.”

However, in relation to the applicant the respondent had given notice by letter dated 1 December 2005, which was subsequently  
10 corrected on 2 February 2006, terminating the applicant’s services with effect from 28 February 2006 in terms of the expiry of the fixed term contract.

The applicant also contends that the termination of the fixed term contract was unlawful because the respondent ought to have given three months notice in terms of clause 5.1 of the agreement of its intention to terminate the contract. Clause 5.1 reads as follows:

“Notwithstanding anything to the contrary in clause 1 of the agreement either party to this agreement may terminate it at any time during the currency thereof, giving three months  
20 notice in writing to the other party.”

Clause 1 records the duration of the contract. Clause 5.1 clearly refers to the termination of the contract during the currency. As the contract was not being terminated during its currency, but by effluxion of time, the respondents were not obliged to notify the applicant of the expiration of their contract. The notices issued in December and February therefore were superfluous.

In the opinion of the Court, the contract came to an end in February 2006 by effluxion of time. This opinion is fortified by the further conclusion that the email drawn from the general webmail of the respondents, did not extend the applicant's contract. The webmail extended the contracts of temporary workers. It was issued after the applicant's contract had expired by effluxion of time, alternatively after she had received the letters confirming that her last day of work would be 28 February 2006.

In any event, even if the Court is wrong in this construction, the  
10 webmail does not allow the applicant to assume that her contract will be renewed for an entire three-year period, which is what she claims as damages. At most, she could claim one month's notice.

The matter was complicated by the respondent initiating disciplinary action against the applicant for misconduct committed during her employment, however, the disciplinary proceedings commenced after the contract of employment expired. The respondent had no obligation to hold such an inquiry once the employment relationship had terminated and once it relied on the expiry of the fixed term contract as a basis for the termination. The respondent's  
20 explanation is that it held such an inquiry out of extreme caution to ensure that the termination was fair. However, having concluded that the inquiry was superfluous and academic the Court has no need to investigate whether the inquiry was fair.

The applicant bears the onus of proving the alleged breach of contract and all her damages. Having failed to prove that her contract

was extended beyond February 2006 or any other period, her claim must be dismissed. There is also no evidence that the applicant tendered her services after February. It appears that she was not remunerated after February 2006. In the circumstances, the claim is dismissed with costs.

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PILLAY D, J

10 Applicant's Representative: Mr Sebola (Union Official: Retail & Allied Workers Union)

Respondent's Representative: Ms. M.S.B.M Sono (Maserumule Inc.)

Date of Hearing: 09 March 2007

Date of Judgment: 09 March 2007