IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN

REPORTABLE

CASE NO: 21435/12

In the matter between:

ERNEST THERON	Plaintiff
and	
THE PREMIER OF THE WESTERN CAPE PROVINCE	First Defendant
DIRECTOR GENERAL, DEPARTMENT OF THE PREMIER, WESTERN CAPE	Second Defendant

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JUDGMENT DELIVERED ON 10 OCTOBER 2017

GAMBLE, J:

INTRODUCTION

[1] On 13 July 2009 the Plaintiff concluded a written contract of employment with the Western Cape Provincial Development Council ("the PDC") in terms whereof he was appointed as its chief executive officer ("CEO") for a fixed term of three years effective from 1 July 2009 to 30 June 2012. The contract made

provision for the general terms and conditions of his employment and included an all inclusive annual remuneration package of R746 181. In addition, the plaintiff was entitled to a performance bonus and annual leave of 24 working days. The contract provided that, notwithstanding the fact that it was for a fixed term of 3 years, either party could terminate the agreement on one month's written notice to the other side under certain agreed circumstances[1].

[2] The PDC was a creature of statute having been established by the Provincial Development Council Act, 5 of 1996, which act was later amended by the Provincial Development Council Law Amendment Act, 4 of 2004. Early in September 2010 the plaintiff received a letter from the first respondent informing him that the Provincial Cabinet had taken a decision that the PDC should be disestablished and that all its assets, liabilities, contracts, rights and obligations would be transferred to the Department of the Premier (hereinafter "the Department").

[3] A further letter was written to the plaintiff by the MEC for Finance, Economic Development and Tourism on 3 November 2011 impressing upon him the need to urgently finalize the *"retrenchment*" process in respect of employees of the

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[1] *9.**Termination***

9.1 Notwithstanding anything to the contrary in clause 5.1 herein contained, either party to this Agreement may terminate it at any time during the currency thereof on giving one month's notice in writing to the other party. The EMPLOYER may, however, in its discretion accept a shorter period of notice.

9.2 The EMPLOYER may terminate this Agreement summarily or after notice of less than one month, as it may deem expedient, in the event of a breach of the terms of this agreement by the EMPLOYEE. The agreement may otherwise only be terminated for reasons relating to misconduct, operational requirements or incapacity."

PDC as it was said that the legislative program in relation to the passage of an act to disestablish the PDC was at an advanced stage. As the PDC's CEO, the plaintiff was effectively tasked with managing his own "*retrenchment"* (along with other employees of the PDC) in collaboration with the chief financial officer of the PDC, Ms Domingo.

[4] I say "*retrenchment*" because in broad terms the intended termination of the plaintiff's contract of employment was based on "*operational requirements*" as that term is understood in s189 of the Labour Relations Act, 66 of 1995 ("the LRA"). In any event, in November 2011 the plaintiff and Ms Domingo drew up a document which detailed the amounts that were considered to be payable to the various staff members of the PDC upon the anticipated disestablishment. In relation to the plaintiff the amount due was calculated to be R678 690.31, made by as to:

- The PDC's alleged "*contractual obligation*" to the plaintiff of R499 736.17 (being the balance of his salary then due to him up to the end of his contract);
- Leave pay of R82 369.92;
- A performance bonus of R96 459.44; and
- UIF contributions by the PDC of R124.78.

[5] In the result no agreement as to the basis for the termination of the plaintiff's employment with the PDC was concluded prior to 5 December 2011 and

there was no "*retrenchment package*" to which he could lay claim under the LRA, or any agreed amount which the first defendant could be required to pay as an existing liability of the PDC, whether in the amount of R678 690.31 or any lesser sum.

THE REPEAL ACT

[6] On 2 December 2011 the first defendant signed and assented to the Provincial Development Council Repeal Act, 5 of 2011 ("the Repeal Act") which was gazetted on 5 December 2011 thereby immediately disestablishing the PDC. It is said now that the gazetting was an administrative error in that the promulgation was only intended to be effected once all outstanding staff issues were resolved. Accordingly, as at 5 December 2011 the plaintiff was still employed as the CEO of the PDC and there was no basis for the termination of his fixed term contract, other than the impending disestablishment of the PDC. Importantly, there had been no transfer or assignment of the plaintiff's contract of employment in terms of s197 of the LRA from the PDC to the Department as at that date. The effect of the Repeal Act therefore was that the plaintiff's contract of employment was effectively terminated when the first respondent assented thereto since the entity which employed him ceased to exist. By way of analogy, it could be said that the plaintiff was in a position similar to that of a worker employed by a sole proprietor who had died.

[7] In terms of section 4 (b) of the Repeal Act, upon the disestablishment of the PDC, all of its outstanding liabilities were required to be settled by the

Department[2]. In light of the fact that the plaintiff's fixed term contract of employment was stiil of full force and effect and had not been terminated by the PDC as at the date of disestablishment, one of the PDC's outstanding liabilities as at 5 December 20011 was its ongoing contractual obligation to the plaintiff under his contract of employment.

[8] On 8 December 2011 a certain Mr Brent Gerber (who was apparently the erstwhile incumbent of the office of the second defendant) informed the plaintiff in writing of the promulgation of the Repeal Act in the following terms:

> *"On 2 December 2011 the Premier assented to the Bill. Unbeknown to us the Provincial Parliament had forwarded the Bill to the Government printers for publication on 5 December 2011. This office was informed on 7 December 2011 that the Act had been published in the Provincial Gazette on 5 December 2011, on which day it came into effect."*

[9] A copy of the Repeal Act was attached to Mr Gerber's letter and the plaintiff was informed of the legal implications thereof (insofar as Mr Gerber understood them) in regard to his contract of employment. The plaintiff was told that a certain Mr Clive Stuurman had been appointed by the Provincial authorities to

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[2] " **Transitional provisions**

4. For the purposes of disestablishment of the Provincial Development Council -

(a)……

(b) all outstanding liabilities of the Provincial Development Council as at date of disestablishment must, subject to the Public Finance Management Act, 1999 (Act 1 of 1999), be settled by the Department of the Premier."

oversee the finalization of the dissolution process of the PDC. The plaintiff was further informed by Mr Gerber as follows:

> *"1. The staff's contracts and/or permanent employment were terminated as a result of the disestablishment of the PDC. Mr Stuurman's first task would (sic) be to advise staff that as of Monday, 5 December, their services were terminated as a result of the dissolution. He would (sic) also require the PDC's former CFO's assistance to calculate the salaries, accrued leave, severance and any other payments due to each employee. I would appreciate if this was treated as a priority, as it is a liability of the PDC at the date of disestablishment in terms of section 4 (b) of the Repeal Act…"*

PAYMENTS ARISING FROM THE DISESTABLISHMENT AND SUBSEQUENT LITIGATION

[10] On 15 December 2011 the plaintiff was informed by Mr Stuurman that his contract had been terminated by operation of law with effect from 5 December 2011. It is common cause that he was later paid 2 amounts totalling R325 961.42 :

- R90 724.69 on 20 December 2011, and
- R235 236.73 on 15 March 2012.

[11] The plaintiff was dissatisfied with the amount paid to him believing that he was entitled to be remunerated up to the expiry of his contract on 30 June 2102. Accordingly, in February 2012 he approached the Commission for Conciliation,

Mediation and Arbitration ("the CCMA") in terms of the LRA, claiming compensation as a consequence of an alleged unfair dismissal. In those proceedings the first defendant adopted the stance that the plaintiff was not an employee in her department and that there had accordingly been no dismissal as alleged.

[12] In an arbitration award handed down on 21 June 2012, a CCMA commissioner upheld the first defendant's argument and found that the CCMA lacked the necessary jurisdiction to hear the matter. The plaintiff evidently decided not to proceed further under the LRA but approached this court in November 2012 for contractual relief under the common law.

BASIS OF THE PLAINTIFF'S CLAIM IN THIS COURT

[13] In his particulars of claim, the plaintiff sought damages from the defendants in the sum of R352 728.89 being the difference between what he had been paid by the first defendant and the amount of R678 690.31, which he claimed was the amount that would have accrued to him if the contract had run its full term. His claim is therefore one for damages based on his positive *interesse* – the right to be put in the position that he would have been in had the contract not been terminated.[3]

[3] Van der Merwe et al Contract, General Principles (4th ed) at 362; ISEP Structural Engineering and Plating (Pty) Ltd v Inland Exploration Co (Pty) Ltd 1981 (4) SA 1 (A); Rens v Coltman 1996 (1) SA 452 (A)

[14] The case for the plaintiff has not been pleaded on the basis that there was a breach of the contract of employment by the PDC. The high water mark of his case is to be found in the following allegations in the particulars of claim:

> *"13. The Repeal Act had the result that the plaintiff's Employment Contract (sic) was effectively terminated by the Premier of the Western Cape Government when she assented to it.*
>
> *14. The sole cause for the termination of the plaintiff's Employment Contract (sic) was the signing and assenting to the Repeal Act by the Premier of the Western Cape Government."*

THE DEFENDANTS' RESPONSE

[15] When the first defendant entered an appearance to defend the plaintiff applied for summary judgment and in an affidavit filed in opposition thereto on behalf of the first defendant, Mr Gerber set out the departmental defence as follows:

> *"12. I admit that the plaintiff and the Council concluded a contract of employment. In terms of paragraph 5.1 the contract of employment commenced on 1 July 2009. Clause 5.2 thereof provides that the contract of employment would not extend beyond 30 June 2012. The contract of employment however, also provides that either the plaintiff or the Council could terminate the contract of employment on one month's written notice to each other (see paragraph 7.9 of the particulars of claim). Thus,*

notwithstanding the provisions of clause 5, the contract of employment could be brought to an end upon one month's written notice by either party.

13. I admit that the defendants paid the plaintiff the sum of R90 724.69 on 20 December 2011 and the sum of R235 236.73 on 12 March 2012 as alleged in paragraph 19.9 of the particulars of claim, i.e. a total of R 325 961.42. This amount excludes the unemployment insurance fund (UIF) contribution of R128.78 as detailed below.

14. I respectfully point out that the sum total of the amounts paid above is made up of the following amounts:

a.	*Pro-rata 15th December salary*	*R35 206.46*
b.	*Leave pay (11.97 days)*	*R39 427.21*
c.	*2010/2011 performance bonus*	*R96 459.44*
d.	*Severance pay (two completed weeks)*	*R32 949.64*
e.	*One month's notice*	*R71 390.88*
f.	*UIF*	*R124.78*
		[R275 558.61]

15. The defendants deny that any other amounts are due and payable to the plaintiff. Accordingly, the plaintiff is required to prove the defendants' liability for any amount above that which has already been paid."

[16] Mr Gerber's maths does not add up: as demonstrated above the aggregate of the individual sums referred to in para 14 of his affidavit is R275 558.61 and not R325 961,42 as alleged in para 13. In any event, on 4 March 2013 the application for summary judgment was refused by agreement and the defendant was granted leave to defend the matter.

[17] In the plea filed on behalf of the defendants it was admitted that the plaintiff's contract of employment was terminated by operation of law. In relation to the components of the plaintiff's claim for damages as set out in paragraphs 19.1 to 19.7 of the particulars of claim, the defendants surprisingly pleaded that they had no knowledge of the allegations contained in such paragraphs and put the plaintiff to the proof thereof, this notwithstanding the positive assertions made by Mr Gerber in the affidavit opposing summary judgment as to the component parts of the amounts paid to the plaintiff in December 2011 and March 2012. In relation to the amount claimed in respect of UIF the first defendant, notwithstanding Mr Gerber's allegation in para 14 of his affidavit, denied in the plea that the plaintiff was entitled to the amount claimed and said that it was a statutory deduction which the defendants were obliged to deduct from the 2 amounts paid to the plaintiff, as set out above.

[18] In the result, the case for the first defendant on the pleadings is anything but a picture of clarity, and does not serve to assist the court in

understanding its defence. However, as the trial progressed, it became clear that the first defendant adopted the view that the plaintiff was only entitled to one month's *"notice pay"* and not the amount due up to the expiry of the contract. The legal basis for that claim was never properly pleaded but was dealt with comprehensively by counsel for the defendants, Mr de Villiers Jansen, in his heads of argument. The defendants' case is that in a without prejudice letter written on 8 December 2011 the plaintiff was effectively given one month's notice and paid a month's notice pay together with ceratin other amounts to which he was contractually liable, and it is denied that he is entitled to anything more. I did not understand the plaintiff to dispute any of the amounts paid to him other than the "*notice pay".*

THE EVIDENCE

[19] The plaintiff gave evidence in support of his claim and testified, inter alia, that he had not been given contractual notice by the PDC before its disestablishment, or by the Department thereafter. Further, he said that he had not been able to find any alternate employment after the disestablishment of the PDC. None of this evidence was challenged by the defendants.

[20] Mr Stuurman, then the Acting Chief Director in the Department, was the only witness called by the first defendant. He was asked to explain how it came about that the sum of R325 961.42 was paid to the plaintiff as a consequence of the termination of his contract. Mr Stuurman said that he had been told how the sum had been calculated but was unable to say what the legal basis therefor was. That decision, he said, had been taken by Mr Gerber, who evidently held the view that the

plaintiff was only entitled to one month's notice pay and was not entitled to the balance of his contractual remuneration. Mr Gerber did not explain the reasoning behind this decision to the court and so Mr Stuurman's evidence on that score is, strictly speaking, inadmissible hearsay.

THE PLAINTIFF'S CLAIM AT COMMON LAW

[21] Counsel for the plaintiff, Ms Mahomed, submitted that the effect of the first defendant's assent to the promulgation of the Repeal Act in the circumstances which prevailed at the beginning of December 2011 was the premature termination of the plaintiff's contract of employment. The plaintiff was both willing and able to perform all of his obligations in terms of that contract with the PDC but was precluded from doing so by virtue, not through the passing of the Repeal Act by the Provincial Legislature, but the implementation thereof through the assent of the first defendant which breathed life into the nascent legislation.

[22] Ms Mahomed referred the court to the decision of the Supreme Court of Appeal in *Wolfaardt*[4], pointing out that the plaintiff was entitled to approach this court under the common law for damages for breach of contract and was not restricted to exercising a statutory remedy under the LRA for an unfair dismissal. There can be no debate with that submission: the preservation of the plaintiff's common law remedy in contract is apparent from the judgment of Nugent AJA in *Wolfaardt:*

[4] Fedlife Assurance Ltd v Wolfaardt 2002 (1) SA 49 (SCA)

"[13] The clear purpose of the Legislature when it introduced a remedy against unfair dismissal in 1979[5] was to supplement the common law right of an employee whose employment might be lawfully terminated at the will of the employer (whether on notice or summarily for breach). It was to provide an additional right to an employee whose employment might be terminated lawfully but in circumstances that were nevertheless unfair…..

[15] However, there can be no suggestion that the constitutional dispensation deprived employees of the common law right to enforce the terms of a fixed-term contract of employment. Thus irrespective of whether the 1995 Act was declaratory of rights that had their source in the interim Constitution or whether it created substantive rights itself, the question is whether it simultaneously deprived employees of their pre-existing common law right to enforce such contract, thereby confining them to the remedies for 'unlawful dismissal' as provided for in the 1995 [Labour Relations] Act.

[16]….. The continued existence of the common law right of employees to be fully compensated for the damages they can prove they have suffered by reason of an unlawful premature termination by their employers of fixed term contracts of employment is not in conflict with the spirit, purport and objects of

[5] This is a reference to the 1979 amendments to the Labour Relations Act, 28 of 1956, which introduced the erstwhile unfair labour practice regime in to our employment law.

the Bill of Rights and it is appropriate to invoke the presumption[6] in the present case.

[17] The 1995 Act does not expressly abrogate an employee's common law entitlement to enforce contractual rights and nor do I think that it does so by necessary implication. On the contrary there are clear indications in the 1995 Act that the Legislature had no intention of doing so."

[23] Ms Mahomed went further and relied on ***Wolfaardt*** and cases such as ***Solidarity*** [7] and ***Buthelezi*** [8] in support of the argument that premature termination of employment of a fixed term contract entitles the employee to damages. The problem with those cases is, firstly, that they all involved dismissals under fixed-term contracts, and, secondly, that they were brought before the Labour Court in terms of the LRA under jurisprudence which recognizes a claim for unfair dismissal.

[24] In relation to the latter Nugent AJA made the following observation in relation to the definition of *"dismissal"* in s186 (b)[9] of the LRA –

"[18]… It is significant that although the Legislature dealt specifically with fixed term contracts in this definition it did not include the

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[6] The presumption referred to is that in the interpretation of statutes it is presumed that the Legislature does not intend to interfere with existing law.

[7] Solidarity and another v Public Health and Welfare Sectoral Bargaining Council and others 2014 (5) SA 59 (SCA)

[8] Buthelezi v Municipal Demarcation Board (2004) 25 ILJ 2317 (LAC)

[9] In terms of s186(b) the definition of *"dismissal*" includes the situation where *"(A)n employee reasonably expected the employer to renew a fixed term contract of employment on the same or similar terms but the employer offered to renew it on less favourable terms, or did not renew it."*

premature termination of such a contract notwithstanding that such a termination would be manifestly unfair. The reason for that is plain: the common law right to enforce such a term remained intact and it was thus not necessary to declare a premature termination to be an unfair dismissal. The very reference to fixed term contracts makes it clear that the Legislature recognised their continued enforceability and any other construction would render the definition absurd."

TERMINATION OCCASIONED BY BREACH?

[25] The cases referred to by counsel for the plaintiff do not deal with termination on notice at common law. So, what then is the position where the termination of a fixed term contract of employment occurs through circumstances other than a breach by one of the parties? It will be observed, firstly, that in terms of clause 9.1 of the agreement the PDC would have been entitled to terminate the contract summarily in the event of a breach by the plaintiff, or, if it considered it expedient to do so in such circumstances, it could have terminated on notice of less than a month. Provided that the breach was established, there would be no contractual liability on the part of the PDC in such circumstances.

[26] Further, in terms of clause 9.2 of the agreement, the PDC was entitled to terminate the employment relationship on a month's notice in the event that the plaintiff was guilty of misconduct, or if operational requirements existed or on account of his incapacity. In the circumstances that prevailed in December 2011, the

only basis upon which the PDC could have terminated on notice was for operational requirements.

[27] That term was not defined by the parties in their agreement and it must bear its ordinary meaning. However, given that the contract arises from an employment relationship it is in my view not unreasonable to have regard to the definition of the term as it appears in s213 of the LRA, it being a term with which both an employer and employee would have been familiar when utilising it in their contractual relationship.[10]

[28] Accordingly, to the extent that the PDC was a statutory body created in the public interest and funded with provincial funds, if it had been informed that its funding was to be curtailed it would no doubt have been entitled to consider dismissing its staff for operational requirements as defined under the LRA. So too, would it have been entitled to dismiss for operational requirements if it had been told of its imminent statutory demise. In either event, it would have been bound to apply s189 of the LRA and the failure to do so would afford a dissatisfied employee relief under the LRA for an unfair dismissal.

[29] But the existence of such operational requirements would not only have triggered the PDC's obligation to follow s189, they would have also afforded it a

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[10] The definition reads as follows: "operational requirements" means requirements based on the economic, technological, structural or similar needs of an employer;"

basis to terminate, without more, the plaintiff's fixed term contract of employment in terms of the agreed notice period. Such a termination, although *"premature"* in the sense that it occurs prior to the expiry of the contract, would not have constituted a breach of the contract at common law as the parties expressly agreed that it could form the basis for early termination. As such, it could not found a claim for damages. Whether that termination was fair or not would not have been a consideration at common law. As I have said, unfairness might have afforded the plaintiff a cause of action under the LRA but that does not fall for consideration in this court, and in any event is an avenue which he has already pursued.

[30] Finally, as I have already said, the case for the plaintiff has not been pleaded on the basis that there was a breach of the contract of employment by the PDC but on the basis set out in para's 13 and 14 of the particulars of claim, to which reference has already been made in para 14 above.

THE AGREED ISSUES

[31] In a pre-trial minute concluded on 20 June 2017 the parties made common cause on a number of issues. Those included the terms of the plaintiff's contract of employment, the fact of his employment with the PDC, the liability of the first defendant in terms of s4(b) of the Repeal Act for the outstanding liabilities of the PDC and , importantly, that

> *"the promulgation of the Repeal Act disestablished the PDC and the contract between the Plaintiff and the PDC was terminated."*

The effect of the common cause issues is that the allegations made in para's 13 and 14 of the particulars of claim are admitted and both parties agree that the contract of employment terminated on 5 December 2011.

[32] In that minute the parties articulated the issues in dispute as follows:

- *"Whether the termination of the Plaintiff's fixed term employment contract can be considered a premature termination; and*

- *Whether the plaintiff is entitled to be compensated for damages in the amount of the full unexpired duration of his fixed term employment contract or whether the plaintiff is entitled to only one month's notice period, arising out of the termination of the plaintiff's fixed term employment contract."*

[33] In relation to the first question, it is noted that the parties do not refer in their minute of a breach of the employment contract, as such. That is for good reason since there was no notice of termination given by the PDC and, further since the first defendant did not (nor could she) terminate the contract given that the plaintiff was never an employee of the Department.

[34] What then do the parties mean when they talk of *"premature termination"* as being an issue in this matter? The phrase suggests that they considered that termination of the contract of employment ahead of 30 June 2012 might, in appropriate circumstances, constitute a breach. It may well be that a notice of termination given by the PDC in the absence of misconduct, operational

requirements or incapacity on the part of the plaintiff would be classified as a breach and hence a *"premature termination"* but that is not what happened here and no such allegations are made in the particulars of claim.

[35] Further, the facts are that the employment contract came to an end as a consequence of the passing of legislation by the relevant Provincial Legislature and its subsequent promulgation by the first defendant. There is no suggestion that those legislative steps and subsequent executive acts were in any way wrongful. The position thus is that the performance of their reciprocal obligations by both the plaintiff and the PDC were rendered impossible by an act of an organ of State *viz* the promulgation of the Repeal Act. In such circumstances the parties are excused from performing and no action lies either way for damages. See *Peters, Flamman and Co v Kokstad Municipality 1919 AD 427 at 434; LAWSA Vol 13 Part 1 para 260.*

[36] In the circumstances I am unable to find that the plaintiff has established a breach in the form of a premature termination which entitles him to relief at common law.

HAS THE PLAINTIFF SUFFERED DAMAGES?

[37] Turning to the second issue articulated by the parties in their pre-trial minute, the court is required to determine whether the plaintiff is entitled to contractual damages calculated with reference to the balance of the contract period or only payment of one month's notice arising out of the termination. In this regard

Ms Mahomed relied on the decision of the Labour Appeal Court in *SAFA*[11]. The case involved a fixed term contract of employment of the respondent during the currency of the 2010 FIFA Soccer World Cup. His contract had been terminated prior to the expiry thereof and he sued the appellant in the Labour Court in terms of s77(3) of the Basic Conditions of Employment Act, 75 of 1997, which gives the Labour Court concurrent jurisdiction with the civil courts to hear claims based on contracts of employment. One of the issues that arose before the Labour Court was the computation of the employee's damages, if any. In considering the basis of a claim for damages at common law, Murphy AJA had the following to say:

> *"[39]…..Non-compliance with procedural provisions in a contract of employment ordinarily will ground a claim for unfair dismissal in terms of the LRA, even where there is a justifiable substantive reason for dismissal; but at common law a procedural breach will be of no contractual consequence unless it results in damages, particularly where there has been a material breach or repudiation by the employee entitling the employer to cancel. In the law of contract there must be a causal nexus between the breach (procedural or otherwise) and the actual damages suffered. A contractant must prove that the damage for which he is claiming compensation has been factually caused by the breach. This involves a comparison between the position prevailing after the breach and the position that would have obtained if the breach had not occurred. Accordingly, if the*

[11] The South African Football Association v Mangope (2013) 34 ILJ 311 (LAC)

respondent's contract is found to have been lawfully terminated on account of his repudiation of the warranty of competence, he would have suffered no contractual damages arising from the procedural breaches. As I have just explained, he may have been entitled to compensation (not damages) in terms of the LRA for a procedurally unfair dismissal, but then he needed to refer an unfair dismissal dispute to the CCMA in terms of section 191 of the LRA."

[38] Murphy AJA went on to say, with reference to the judgment in this Division in *Myers*[12], that ordinarily the measure of an employee's damages in the case of a material breach of a fixed term contract is the difference between what might have been earned had the contract run to its stipulated conclusion and any sum which could reasonably have earned during that period. But the court there stressed that it was dealing with cases of material breach. Where there is no breach but a lawful termination, the measure of a party's claim is limited to the loss of salary for the notice period.[13]

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[12] Myers v Abrahamson 1952 (3) SA 121 (C)

[13] Harper v Morgan Guarantee Trust Co of New York, Johannesburg and another 2004 (3) SA 253 (W) at 258 D-G; Parry v Astral Operations Ltd [2005] 10 BLLR 982 (LC) at [97]; National Entitled Workers Union v CCMA and others (2007) 28 ILJ 1223 (LAC) at [15]; Morgan v Central University of Technology, Free State [2013] 1 BLLR 52 (LC) at [10].

CONCLUSION

[39] In the circumstances, I am bound to conclude that the plaintiff's claim against the PDC, for which the Department is liable, is his notice pay. There is no dispute between the parties that that amount has been paid in full together with all the other amounts contractually due to him by the the Department. In the circumstances his claim against the defendants cannot succeed.

ORDER OF COURT:

The plaintiff's claim is dismissed with costs.

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GAMBLE J