THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JS72/2024

In the matter between:

SOLIDARITY OBO NEL RH **Plaintiff**

and

PARAMOUNT AEROSPACE SYSTEMS (PTY) LTD **Defendant**

Heard: **14 August 2025**

Delivered: **09 September 2025**

This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date for handing down judgment is deemed to be 09 September 2025.

JUDGMENT

ITZKIN, AJ

Introduction

[1] The plaintiff (Mr Nel) claims damages from the defendant (Paramount) in terms of section 77(3) of the Basic Conditions of Employment Act[1] (BCEA), arising

[1] Act 75 of 1997.

from Paramount's alleged breach of contract through its termination of Mr Nel's fixed-term contract of employment (FTC) prior to the FTC having run its course.

[2] Mr Nel's FTC, which was extended several times, and prior to the term of the final extension coming to an end, Paramount dismissed him based on operational requirements by terminating his FTC on one month's notice. Mr Nel's claim is for the amount payable for the outstanding (i.e. unexpired) period of his extended FTC as at the date of the termination of his FTC.

[3] Paramount opposes the claim on the basis that the termination of Mr Nel's employment with one month's notice accorded with the FTC (and was thus not in breach thereof).

[4] At the commencement of the trial, Mr Nel's representative confirmed that although the pleadings and pre-trial conference minute make reference to aspects pertaining to an unfair dismissal (in addition to the contractual claim), his case is confined to a contractual claim. The parties' representatives also confirmed their agreement regarding the deletion of paragraph 4.1 of the pre-trial conference minute, which referred to a disputed fact regarding whether Paramount had failed to consult in accordance with section 189 of the Labour Relations Act[2] (LRA).

<u>The essential chronology</u>

[5] On 24 May 2018, Mr Nel concluded an FTC with Paramount, which provided for his employment to commence on 4 June 2018 and to terminate on *'31 June 2020 / End of F1 Mirage Contract'*.

[6] Clause 3 of the FTC provided as follows:

> '3. COMMENCEMENT AND DURATION
>
> 3.1. The Employee's employment with the Company shall commence on the Commencement Date and shall automatically terminate without notice on

[2] Act 66 of 1995, as amended.

the Termination Date, unless it expires or is terminated prior to the Termination Date in accordance with the provisions of this Agreement.

3.2 During the Contract Period, either Party shall be entitled to terminate the employment relationship by giving the other party 1 (one) months' notice of termination. The Company may elect to pay the Employee in lieu of notice.

3.3 The Employee expressly acknowledges and agrees that he has no expectation of this Agreement being renewed or extended beyond the Termination Date or of being employed for longer than the Contract Period. The Employee further agrees that no representations have been made by the Company to in any way indicate that a new fixed period contract will be concluded or that this contract will be renewed after the Termination Date. It is also understood that this Agreement is not an offer of permanent employment, nor is the Contract Period to be regarded as a probationary period.

3.4 Should the Parties at any time agree to renew this Agreement or extend the Contract Period, no such renewal or extension shall be valid and binding on either Party, unless it is recorded in writing and signed by both Parties.

3.5 The Company shall be entitled to terminate this Agreement without notice for any reason recognised by law as being sufficient.'

[7] Clause 10 of the FTC provided as follows:

'10. TERMINATION

10.1 Notwithstanding the provisions of clause 3 above, the Company may terminate the Employee's employment with immediate effect prior to the Termination Date If the Employee is at any time: Notwithstanding the provisions of clause 3 above, the Company may terminate the Employee's employment with immediate effect prior to the Termination Date If the Employee is at any time:

10.1.1 guilty of dishonesty, or any other gross misconduct, or gross incompetence or wilful neglect of duty, or commits any other serious breach of this Agreement, or

10.1.2 acts in any manner (whether in the course of his duties or otherwise) which is likely to bring his name or the name of the Company into disrepute or prejudice the interests of the Company; or

10.1.3 be or become of unsound mind; or

10.1.4 become incapable of performing his duties hereunder by reason of ill health or other incapacity whether accidental or otherwise; or

10.1.5 be convicted of a criminal offence; or

10.1.6 for any other reason recognised in law as sufficient to justify summary dismissal.

10.2. On the Termination Date or on the termination of this Agreement prior to the Termination Date in terms of the provisions of this clause, the Employee shall forthwith return to the Company in accordance with its instructions all equipment, correspondence, records, specifications, software, models, notes, reports and other documents and any copies thereof and any other property belonging to the Company including but not limited to the Company's keys, credit cards, equipment and passes which are in his possession or under his control. The Employee shall, if so required by the Company, confirm in writing his compliance with the obligations under this clause.

10.3. The Employee agrees that the Company may in its sole and absolute discretion, require the Employee not to attend at work and/or not to undertake all or any of his duties hereunder during all or any part of any period of notice whether given by the Employee or the Company provided always that the Company shall continue to pay the Employee's salary and contractual benefits.

10.4 The termination of the Employee's employment shall be without prejudice to any right the Company may have in respect of any breach by the Employee of any of the provisions of this Agreement which may have occurred prior to the Termination Date.'

[8] There were two extensions of the FTC by way of extension letters:

8.1 The first extension letter is dated 19 March 2020, and it provided for an extension *'until 31 July 2022 / end of F1 Mirage Project'*.

8.2 The second extension letter provided for a further extension until 31 July 2024. It also provided for an additional condition that the extension would be contingent on him successfully applying for an L1-Visa, and that *'[a]ll other terms and conditions agreed upon remain unchanged'*.

[9] During Mr Nel's employment, he was deployed by Paramount to work in the United States of America at Airborne Tactical Advantage Company (ATAC), with which Paramount had partnered in terms of a contract.

[10] There is no dispute that Mr Nel successfully obtained his L1-Visa following the final extension of the FTC being put into place.

[11] On 8 August 2023, Paramount issued notices of termination to Mr Nel and three other employees.

[12] However, on 21 August 2023, ATAC retracted the termination letter and issued a notice to Mr Nel, initiating a retrenchment consultation process in terms of section 189 of the LRA.

[13] On 15 September 2023, Paramount issued a notice of termination of Mr Nel's employment, which stated that his employment was being terminated, on one month's notice, based on its operational requirements.

[14] Mr Nel's FTC was thus terminated with effect from 14 October 2023.

[15] The termination of Mr Nel's FTC by Paramount thus occurred nine and a half months prior to the date of 31 July 2024 provided for in the last FTC extension letter.

[16] As at the termination of Mr Nel's employment, Mr Nel's monthly remuneration amount was R61 190.24.

<u>Evaluation</u>

[17] Mr Nel's case relied heavily on the judgment of the Labour Appeal Court (LAC) in *Buthelezi v Municipal Demarcation Board*[3] (*Buthelezi*).

[18] That case involved an unfair dismissal claim (unlike the present case, which is a purely contractual claim). However, in the determination of the unfair dismissal claim, the LAC made reference to the position under the common law of contract. It did so in the context of the controversy regarding whether the employee's dismissal was unfair on account of the employer having breached the employee's FTC by impermissibly terminating it during its subsistence.

[19] The LAC framed the issue in these terms:

> '[7] In essence, the appellant contended that the dismissal was substantively unfair because the respondent had no right in law to terminate the fixed-term contract of employment between them prior to the expiry of its term even if there were operational requirements which could have justified a termination of contract for an indefinite period. He also argued that the court a quo, having found that the dismissal was substantively and procedurally unfair, should have awarded him compensation. He further contended that the court a quo erred in finding that his retrenchment complied with the requirements of section 189 of the Labour Relations Act 66 of 1995 ("the Act"). On behalf of the respondent these contentions were disputed and it was submitted that, where there are operational requirements that would justify a dismissal, an employer is entitled to dismiss an employee even if his contract of employment is for a fixed term. It was submitted on behalf of the respondent that there was a fair reason for the dismissal of the appellant which were based on the respondent's operational requirements. It was further submitted on the respondent's behalf that, in any event, even if the dismissal was unfair, the court a quo's decision that the appellant should not be awarded any compensation was justified and correct.'

[20] The LAC held as follows:

[3] [2005] 2 BLLR 115 (LAC).

> '[9] The first question that arises in the present matter is <u>whether the respondent was entitled to terminate the employment contract between it and the appellant when it cancelled it</u>. There is no doubt that <u>at common law a party to a fixed-term contract has no right to terminate such contract in the absence of a repudiation or a material breach of the contract by the other party</u>. In other words <u>there is no right to terminate such contract even on notice unless its terms provide for such termination</u>. The rationale for this is clear. <u>When parties agree that their contract will endure for a certain period as opposed to a contract for an indefinite period, they bind themselves to honour and perform their respective obligations in terms of that contract for the duration of the contract and they plan, as they are entitled to in the light of their agreement, their lives on the basis that the obligations of the contract will be performed for the duration of that contract in the absence of a material breach of the contract.</u> Each party is entitled to expect that the other has carefully looked into the future and has satisfied itself that it can meet its obligations for the entire term in the absence of any material breach. <u>Accordingly, no party is entitled to later seek to escape its obligations in terms of the contract on the basis that its assessment of the future had been erroneous or had overlooked certain things. Under the common law there is no right to terminate of a fixed-term contract of employment prematurely in the absence of a material breach of such contract by the other party</u>.' (Emphasis added.)

[21] The question that arises from this dictum is whether, if a FTC provides for a right on the part of either party to terminate on one month's notice (without specifying the reasons that must underpin such termination), it can lawfully be terminated on notice, or whether in providing for an 'early' termination, the contract must also provide for the circumstances under which such termination may be effected (i.e. the reasons for which such notice may be given).

[22] For present purposes, the question is whether the FTC must specify that it may be terminated on notice based on operational requirements, or whether it is sufficient for it to merely provide for termination on notice.

[23] This distinction is relevant because in the present case, the FTC provides (in clause 3.2) for termination on one month's notice, but the FTC contains no reference to the permissible reasons for which such notice may be given.[4] (That clause is to be read with clause 10.3, which permits Paramount to require Mr Nel not to attend at work *"during all or any part of any period of notice whether given by the Employee or the Company"*.)

[24] It appears to have been unnecessary for the LAC in *Buthelezi* to articulate the position in relation to this distinction, because it appears that the FTC in that matter did not provide for premature termination (on notice) at all.

[25] A labour lawyer's intuitive position would likely be that it is necessary for the termination of an employment contract to be based on a permissible reason. The LRA, which provides for fair dismissal protections, makes that position clear. But does that position operate in the realm of the common law of contract?

[26] The issue has formed the subject of a series of judgments of this court, from which it appears that the answer to this question is *'no'*.

[27] In *Lottering & others v Stellenbosch Municipality*,[5] this Court (per Cheadle AJ) confirmed that an FTC may only be terminated on notice if there is a specific provision permitting termination on notice during the contractual period.

[28] The judgment in *Magopeni v Acacia Mining SA (Pty) Ltd & others*[6] is also authority for the proposition that, where parties enter into an FTC of employment, there are two exceptional scenarios in which a premature termination may be

[4] Although it was contended during the trial, on behalf of Paramount, that by operation of clause 3.5 (which provides that *"[t]he Company shall be entitled to terminate this Agreement without notice for any reason recognised in law as sufficient"*), operational requirements are referred to by implication, this construction is unsustainable, given that dismissals for operational requirements are not recognised in law as being a sufficient basis for termination without notice (colloquially referred to as summary dismissal).
[5] (2010) 31 *ILJ* 2923 (LC) at para 14.
[6] [2020] ZAGPPHC 300 (30 March 2020) at para 40.

effected. The first is that there should be a repudiation or material breach of the terms of the contract. The second is where the terms of the contract provide for such termination. In the latter instance, this Court has held that by entering into an FTC for a specific period, the parties intend to be bound by the contract for the stipulated duration unless there is an express provision made for earlier termination.[7]

[29] In *Farinha v Boogertman and Partners*[8] (*Farinha*), this Court (per Van Niekerk J, as he then was) considered the issue in the context of a project-linked FTC which contained a provision allowing either party to give notice of termination during its subsistence.

[30] The Court held as follows:

> '[11] In the present instance, <u>the contract is a hybrid. The preamble to the agreement record that the period of employment is the duration of the Fourways Mall Project. Clause 3 of the contract introduces a right to terminate the contract during the course of the fixed term</u>. One might question, as the applicant's attorney did, why the preamble was necessary if the intention was to conclude a contract that could be terminated on notice. But the contract is what it is, and the court must make sense of it. But the approach to be adopted is one that requires the court to have regard, initially at least, to the language read in context, having regard to the purpose of the document and the background to the preparation and production of the document. <u>The language of clause 3 is clear. It imposes notice periods that either party may invoke to terminate the contract.</u> While as Mr Morgan submits, the clause does not expressly refer to any right to give notice to terminate the contract, it is difficult to conceive of any other purpose that the clause might serve. Indeed, the heading to the clause ('Termination of Service') makes clear the notice periods are established precisely for the purpose of terminating the contract. Further, the background to and preparation of the document was the subject of the evidence by the applicant and the director responsible for the project and signatory to the agreement on behalf of the respondent, Mr

[7] See also *Nkopane & others v Independent Electoral Commission* (2007) 28 *ILJ* 670 (LC).
[8] (J 437/2019) [2021] ZALCJHB 17 (11 February 2021).

Hennie Coetzee. The applicant did not suggest that the contract was immutably one for the duration of the Fourways Mall project - he conceded that if he were to become medically incapacitated, for example, or render performance to an unsatisfactory standard, that the respondent would be entitled to terminate the contract prior to the completion of the project. The applicant specifically referred to force majeure as a basis that would entitle the respondent to terminate the contract before the contemplated date. While I do not wish to categorise a need to retrench as force majeure, the fact remains that the applicant himself contemplated that circumstances outside of the control of either party might legitimately give rise to a lawful termination of the contract on notice. That being so, I fail to appreciate on what basis the applicant contends that clause 3 should be disregarded as superfluous and disregarded.

…

[13] I find that the terms of the contract concluded between the parties are such that all things being equal, the applicant would be employed by the respondent for the duration of the Fourways Mall project, but that either party remained entitled during that period to give the other one calendar months ' notice of its intention to terminate the contract. In other words, clause 3 of the contract permitted either party to terminate the contract on notice before the expiry of the fixed term stipulated in the preamble. Although the respondent failed initially to give a calendar months' notice, prior to the commencement of the trial, the value of the applicant's remuneration for the balance of the notice period was tendered and accepted. It follows that by terminating the contract as it did, the respondent was not in breach of contract and that the applicant has no claim for contractual damages.' (Emphasis added.)

[31] The circumstances of this case accord substantially with those in *Farinha,* and the conclusions drawn therein find application in this matter.

[32] Mr Nel's FTC was a hybrid contract with a fixed term, but it entitled either party to give the other one calendar month's notice of its intention to terminate it

during its subsistence.[9] Paramount provided Mr Nel with one month's notice of termination of his employment contract as permitted by clause 3.2, and such termination was therefore not in breach of the contract.

[33] It follows that Mr Nel's claim falls to be dismissed.

[34] As an aside, it is worth mentioning that during the evidence of Paramount's witness, Ms Paballo Mmolotsi,[10] she testified that the F1 contract was terminated by ATAC, and that the termination thereof took effect in October 2023. Whilst this, if established, would provide for the automatic termination of Mr Nel's FTC by operation of the provision linking the term to the *'[e]nd of the F1 Mirage Contract'*, the contention that the contract terminated in October 2023 was not pleaded by Paramount, foreshadowed in the pre-trial conference minute, or pointedly put to Mr Nel during cross-examination. It, in any event, has no impact on the outcome herein, as I have already found that Paramount lawfully terminated the FTC by invoking the notice provision.

[35] With reference to the issue of costs, in Paramount's heads of argument, it adopted the position that if Mr Nel's claim is dismissed, no costs order ought to be made against him. I agree that the requirements of law and fairness are best satisfied by making no order as to costs.

Order

1. The plaintiff's claim is dismissed.
2. There is no order as to costs.

Riaz Itzkin
Acting Judge of the Labour Court of South Africa

[9] More recently, in *Sedumedi v Sefako Makgatho Health Sciences University* (2025) 46 *ILJ* 2015 (LC), this Court (per Meyerowitz AJ) recently adjudicated a contractual claim based on the alleged premature termination of a FTC. It upheld an employee's claim for contractual damages, having found that the employment contract did not provide for the employer to terminate the contract on notice, and only provided for the employee to do so.
[10] Paramount's Human Resources and Payroll Manager.

Appearances:

For the Plaintiff: I Stockenstrom of Solidarity

For the Defendant: J Cordier

Instructed by: Cummings Attorneys