



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JS465/2019

In the matter between:

RAMOSEBI PAUL PULE

Plaintiff

and

HEALTHCARE PROFESSIONALS COUNCIL OF

SOUTH AFRICA

Defendant

Heard: 15 and 16 September 2025 (closing arguments delivered on 3 October 2025)

Delivered: 20 October 2025

(This judgment was handed down electronically by emailing a copy to the parties. The 20th of October 2025 is deemed to be the date of delivery of this judgment).

JUDGMENT

ITZKIN, AJ

Introduction

[1] The plaintiff pursues a contractual claim for damages arising from the alleged unlawful termination of his fixed-term contract of employment (the

contract), which was summarily terminated by the defendant on 25 June 2018.

- [2] The claim has two components, which are pursued by the plaintiff concurrently (i.e. not in the alternative):

2.1 The first pertains to the value of the remuneration that he would have received for the unexpired portion of the contract if it had run its course, equating to 47 months' remuneration.

2.2 The second pertains to the value of the remuneration payable for his contractual notice period of 60 calendar days.

- [3] In the defendant's statement of response, it raised two special pleas, the first of which pertained to this Court's jurisdiction, and the second of which reads as follows:

'5. SECOND GROUND – THE MATTER HAS BEEN SETTLED

5.1 The settlement agreement concluded on 13 December 2018 was in full and final settlement of the Applicant's unfair dismissal dispute as well as all statutory claims allegedly due to the Applicant, including remuneration and notice pay.

5.2 The Applicant is accordingly not entitled to pursue this claim.'

- [4] On 4 August 2023, this Court (per Moshoana J) issued an *ex tempore* order dismissing the first special plea and upholding the second special plea.

- [5] When the trial convened, I sought clarity from the parties' representatives regarding the impact of the second special plea having been upheld on the claims before the court. Both representatives, who were present when the 4 August 2023 order was made, were in agreement that the order did not dispose of the two components of the plaintiff's claim, as it was understood that the settlement agreement (and the order upholding the second special plea) pertained only to statutory entitlements and not to the contractual entitlements claimed.

- [6] I was subsequently provided with a transcript of the *ex tempore* judgment that was delivered by Moshoana J together with the order, the concluding paragraph of which reads as follows:

'The compromise reached in the CCMA only compromised the unfair dismissal claim and could not have compromised the breach of contract claim because at that time it did not even exist as a claim. It only became a claim in this court at a later stage.'

- [7] This appears to bear out the parties' representatives' understanding of the order.
- [8] During the course of the trial, the plaintiff gave evidence, after which he closed his case. The defendant called Dr Munyadziwa Albert Kwindu as a witness, after which it closed its case. Written closing arguments were subsequently delivered by the parties on 3 October 2025, for which I am grateful to both parties' representatives.

Brief chronology

- [9] The defendant employed the plaintiff for several years in a relatively junior role. During that period, he acted as Senior Manager: Human Resources and Labour Relations from time to time, including an acting appointment for nine months.
- [10] Following a recruitment process, he was appointed to the position of Senior Manager: Human Resources and Labour Relations for a fixed term of five years, commencing on 1 June 2017. His contract included a probationary period and several terms relevant to this dispute, referred to below.
- [11] There is a dispute regarding whether probationary reviews were conducted with the plaintiff in November 2017 (with the defendant alleging that they were, and the plaintiff disputing this).
- [12] It is common cause, however, that the plaintiff's probation period (which was to end at the end of November 2017) was extended by the defendant for three months until 28 February 2018, and that a probation review took place on 14 December 2017.
- [13] On 19 December 2017, Dr Kwindu (the defendant's erstwhile Acting Chief Operating Officer / COO) signed a document entitled Probation Extension Deliverables, which included various deliverables and expected due dates, some of which were added to the document by the plaintiff.

- [14] On either 22 or 24 December 2017,¹ the plaintiff sent a draft performance agreement to Dr Kwindu. It ought to have pertained to the plaintiff, but it is common cause that he sent the incorrect document, which pertained to one of the plaintiff's subordinates, to Dr Kwindu. It was not signed off between the parties.
- [15] On 29 January 2018, the plaintiff sent a draft performance agreement to Dr Kwindu. It pertained to the plaintiff and was also not signed off between the parties.
- [16] The defendant further extended the plaintiff's probation period from 1 March 2017 to 31 May 2018.
- [17] Probation reviews were conducted on the plaintiff on 15 March 2018 and 30 May 2018.
- [18] On 4 June 2018, the plaintiff submitted an internal memorandum to Dr Kwindu complaining about his assessment during his probation. On the same day, he submitted a grievance to the defendant's acting Registrar / Chief Executive Officer, Adv Khumalo, raising several complaints.
- [19] On 12 June 2018, Adv Khumalo sent a letter to the plaintiff headed "*Notice of Intention to Terminate Employment: Employee on Probation*". It stated that Adv Khumalo intended to terminate his employment, given his failure to perform to the required standards during the initial probation period and the two extension periods. It also invited the plaintiff to make representations within seven working days regarding why his employment should not be terminated.
- [20] On 21 June 2018, the plaintiff's erstwhile representatives, Clientele Legal, addressed a letter to the defendant stating that the plaintiff '*stands by previous correspondences and/or consultations relating to the issue in question*'.

¹ The plaintiff's pleaded case is that this occurred on 22 December 2017. However, in oral evidence, his recollection was that this occurred on 24 December 2017. It is undisputed that it was sent, and for purposes of this matter, nothing turns on whether this occurred on 22 or 24 December 2017.

[21] On 25 June 2018, Adv Khumalo addressed a letter to the plaintiff communicating the termination of his employment with immediate effect.

The contractual provisions

[22] Given that this is a contractual claim, the starting point is the terms of the contract between the parties.

[23] The following clauses are relevant:

'3. PROBATIONARY PERIOD

- 3.1. According to employment policy, your employment is subject to a 6-month probationary period commencing from 01 June 2017.
- 3.2. During your probation period you shall be assessed from time to time by your immediate superior.
- 3.3. During this period if it becomes clear that the job is not ideally suited to you, one week's notice may be given by yourself or Council.

4. DURATION

- 4.1. Your employment with Council is for a five (5) year fixed term period from the date of your appointment which is effective from 1st of June 2017 and automatically expires on 31st May 2022. The performance agreement which will be developed and signed by the Chief Operations Officer and yourself in due course forms an integral part of your employment contract.
- 4.2. Your employment is for a fixed term and no term or condition herein shall be construed as establishing a permanent employment relationship, or creating the expectation of further employment.
- 4.3. The employment contract and the employment relationship between you and the Council shall automatically terminate in its entirety on the expiry of the five-year period, provided that Council may renew this contract for further term(s) on such terms as may be desirable.

...

10. TERMS AND CONDITIONS OF EMPLOYMENT

The HR policies and procedures/Conditions of Employment of Council shall form part of the terms and conditions of your employment. By signing this letter, you confirm that you have read the Conditions of Employment of Council and accept the terms and conditions therein.

The Council retains the right to amend the HR policies and procedures/Conditions of Employment from time to time, which amendments shall form part of your terms and conditions of employment upon written notification to you of such amendments.

11. TERMINATION OF EMPLOYMENT

Notwithstanding clause (4) above, if either you or Council wish to terminate your fixed term contract of employment, 60 calendar days' notice of intention to do so must be given to the other party.

Notice need not be given if there is a serious breach of the contract. In this case, the contract may be terminated summarily. Your employment may be terminated for a fair reason and after a fair procedure has been followed.

12. RULES, POLICIES, PROCEDURES AND PERFORMANCE STANDARDS

You will be subject to and abide by all the Council's work rules, policies, procedures and regulations, including the Council's health and safety rules and procedures, the grievance procedure, the performance standards, and the disciplinary code and procedure, as amended from time to time. All written rules, policies, procedures and regulations are available for perusal upon request.'

[24] The pre-trial conference minute records the following as common cause:

'5. The employment relationship between the Applicant and the Respondent was governed by the contract of employment, incorporating:

5.1 The Conditions of Service contained in the Respondent's Human Resources Policy Manual;

5.2. The Applicant's job description and performance agreement, which would be developed and signed by the Chief Operations Officer and the Applicant;

- 5.3. The HR Policies and Procedures/ Conditions of Employment of the Respondent;
- 5.4. The Respondent's Disciplinary Code and Procedure;
- 5.5. The Respondent's Performance Management and Development Policy. '

[25] With reference to the Performance Management and Development Policy (the policy) referred to in paragraph 5.5 of the pre-trial conference minute:

25.1 It refers to the 'Performance Management and Development System' using the 'PMDS' acronym, and applies to all personnel.

25.2 It defines '*performance management*' as '*the process conducted by the supervisor or his/her designate to manage the performance of an employee against the performance targets and standards set in his/her performance agreement/annual work plan*'.

25.3 It provides, in clause 7, that instruments supporting the PMDS which are mandated by the policy include an '*Annual Work Planning and Performance Agreement*'.

25.4 In clause 8.1(b), it provides that the employee's responsibilities include participating '*in the development of work plans as a performance agreement with Supervisors*'.

25.5 In clause 9, it provides that with reference to probation, '*[t]he PMDS will be utilised to assess the performance of an employee appointed on probation. For the purpose of probation processes, all quarterly review sessions will be in the format of the annual assessment session and confirmed by means of the PDAI form...*'.

[26] The plaintiff alleges that the defendant breached his contract in several respects, including the failure to conclude a performance agreement with him, deficiencies in his performance evaluations, the absence of a pre-dismissal hearing, and the failure to pay him notice pay.

[27] In opposing the claim, the defendant alleges that the plaintiff breached his employment contract by failing to meet the required performance standards.

[28] Before assessing the issue of breach (and the implications of any findings of breach), the plaintiff's approach in concurrently pursuing his two claims, as well as the implications of the notice provision in his contract for any damages claim, warrant consideration.

The plaintiff's approach in concurrently pursuing his two claims and the implications of the notice provision

[29] A key question for present purposes is whether an employee on a fixed-term employment contract is limited, in his claim for damages, to the value of the contractual notice period provided therein, or whether damages may be claimed for the whole unexpired period of the contract.

[30] The principle relevant to this issue is referred to as 'the limited damages rule', and several judgments are instructive in relation to its operation.

[31] In *National Entitled Workers Union v CCMA*,² the Labour Appeal Court (LAC) contrasted the position under the fair dismissal provisions of the Labour Relations Act 66 of 1995 with the common law contractual position, holding as follows regarding the common law position:

'... Under common law the employer's position was very strong as against an employee. If an employee was dismissed lawfully, e.g. if he was given proper notice of termination of his contract of employment or if he was paid notice pay in lieu of notice, the employee had no remedy in law even if the employer had no reason to terminate the contract of employment or if the dismissal was very unfair. The courts could also not provide any remedy in that situation. If the contract of employment was terminated unlawfully, generally speaking, the only relief that the courts could provide such employee was to award the employee damages which would be equivalent to the notice pay he would have been paid in lieu of notice.' (Emphasis added.)

[32] In *S A Music Rights Organisation Ltd v Mphatso*,³ this Court (per Van Niekerk J, as he then was) held as follows in the context of a damages claim pursued by an employer, pertaining to an alleged unlawful

² (JA51/03) [2007] ZALAC 3; [2007] 7 BLLR 623 (LAC); (2007) 28 ILJ 1223 (LAC) (13 March 2007) at para 15.

³ (J 595/08) [2009] ZALC 34; [2009] 7 BLLR 696 (LC); (2009) 30 ILJ 2482 (LC) at para 17.

termination of an employment contract by an employee (who was alleged to have failed to provide notice in accordance with his contract):

‘The view that a wrongful termination of employment be it at the instance of the employer or, as in this case, by the employee, is remediable only because of its prematurity (i.e. the denial of the promised period of notice or fixed term of employment) may have its roots in the now repealed 1983 BCEA. Section 14(4)(b) of that Act provided that an employee could avoid working an agreed notice period provided that the employee paid the employer a sum equivalent to the remuneration that would have been earned during the notice period. As Mark Freedland points out in his seminal work *The Personal Contract of Employment*, and for the moment viewing the application of the rule from the perspective of a breach by an employer, this approach reflects a conclusion that the purpose of damages for wrongful dismissal is only to protect a worker’s interest in remuneration and benefits for the denied period of notice or unexpired fixed term, and that the quantification is to be conducted on the assumption that the worker’s pecuniary losses are limited to that remuneration and those benefits. While this approach has a particular procedural and remedial context, it appears to remain the dominant approach of English law (see *Johnson v Unisys Ltd* [2001] UKHL 13; [2001] ICR 480 (HL)).’ (References omitted; emphasis added.)

[33] In *Volschenk v Pragma Africa (Pty) Ltd*,⁴ an employee resigned on two months’ notice (although he was employed on a contract requiring one month’s notice), and he initiated a contractual claim in this Court in which he claimed future loss of earnings (and various other amounts). The respondent excepted to the statement of case, and in upholding an exception pertaining to the contractual claim, this Court (per Steenkamp J) held as follows:

‘[22] What remains, as set out in the applicant’s statement of claim, is a contractual claim for damages. That could be no more than his remuneration for one month’s notice under the contract of employment.

⁴ (C414/13) [2014] ZALCCT 24; [2014] 11 BLLR 1146 (LC); (2015) 36 *ILJ* 494 (LC).

In fact, he served and was paid for two months' notice. He suffered no contractual damages.

...

[25] In the case of a periodical contract which is concluded from month to month, as opposed to a fixed term contract, the measure of damages is the remainder of the period of the contract. In this case, the notice period was one month. Volschenk served and was paid for two months. He suffered no damages. This exception must be upheld and the claim dismissed.' (References omitted; emphasis added.)

[34] In *BMW (SA) (Pty) Ltd v National Union of Metalworkers of SA*,⁵ in the context of a dispute regarding a change to a retirement age wherein the employee claimed contractual damages (in addition to pursuing an automatically unfair dismissal claim), the LAC held as follows:

'However, even if this court were inclined to find that Mr Deppe has succeeded in proving that BMW repudiated his employment contract by amending his retirement age from 65 to 60 without his consent, Mr Deppe would only be entitled to contractual damages in the amount of one month's notice in terms of his contract of employment. His damages are limited to the position he would have been in, under the contract, had the breach not occurred. Mr Deppe's contractual claim for five years' damages, therefore, is misplaced as Mr Deppe's contractual claim for wrongful termination of employment is limited to one month's notice pay.'

[35] In *Farinha v Boogertman and Partners*,⁶ this Court (per Van Niekerk J, as he then was) held, in the context of a fixed term employment contract which contained notice provisions permitting either party to terminate on one calendar month's notice (and was terminated on notice), that by virtue of the employer's termination of the employee's contract on notice, the employee had no claim for contractual damages in relation to the unexpired period of the contract.

⁵ (2020) 41 ILJ 1877 (LAC) at para 17.

⁶ (J 437/2019) [2021] ZALCJHB 17 (11 February 2021) at para 13.

[36] These judgments affirm that in the context of an employment contract containing a notice provision, the employee's claim for future loss of earnings is limited to the contractual notice period.

[37] Applied to the present context, the limited damages rule precludes the plaintiff from being awarded damages in excess of those pertaining to his notice period.

The issues of breach and damages

[38] In the context of the operation of the limited damages rule, the key issue for consideration pertains to the summary termination of the contract.

[39] In particular, the central controversy is whether the plaintiff was entitled to 60 days' notice in accordance with the first part of clause 11, or whether the defendant was entitled to summarily terminate the contract in accordance with the second part of clause 11 (which provides that *'[n]otice need not be given if there is a serious breach of the contract. In this case, the contract may be terminated summarily'*).

[40] In order to rely on the second part, it would thus have to be established that there was a serious breach of the contract on the plaintiff's part, through his alleged defective performance.

[41] A key factor in this regard is the absence of a performance agreement concluded between the parties.

[42] Both parties blame each other for this.

[43] Whilst the plaintiff acknowledges that the draft that he sent to Dr Kwinda on 22 December 2017 was incorrect (as it had his subordinate's details on it), he sent a further draft pertaining to himself on 29 January 2018.

[44] The defendant alleges that this draft was not satisfactory in that it failed to set out his performance indicators and targets with sufficient clarity, and these failed to meet the so-called SMART principles (with SMART being an acronym for Specific, Measurable, Attainable, Reasonable and Time-bound). Concerns were also raised in this regard in the probation reviews.

- [45] During his testimony, the plaintiff took issue with this, maintaining that the draft he sent contained sufficient clarity on his performance indicators and targets and met the SMART principles.
- [46] From a reading of the policy (which is contractual), it is clear that the performance agreement is a key measurement tool that ought to have been put into place and then utilised in measuring the plaintiff's performance.
- [47] Based on an overall consideration of the evidence, the defendant did not do enough to seek to finalise a performance agreement with the plaintiff. It did not, for instance, provide the plaintiff with a proposed revised draft or take other concrete steps to facilitate the conclusion of a performance agreement.
- [48] The implication of this, for present purposes, is that although it is evident that the defendant had concerns regarding the plaintiff's performance, in the absence of a performance agreement, it has not been established that there was a serious breach of the contract on the plaintiff's part (in relation to his performance), entitling the defendant to terminate the contract summarily.
- [49] This would have been established if clear performance standards were agreed to in a performance agreement (as required by the policy) and if there was an objectively established material failure to comply with them.
- [50] The fact that a Probation Extension Deliverables document was jointly compiled in December 2017 does not serve as a substitute for a performance agreement, given that the conclusion of a performance agreement and its application in the PMDS process are contractually mandated in terms of the policy.
- [51] Over and above this, the defendant did not adhere to the requirement in paragraph 9 of the policy pertaining to conducting quarterly reviews during his probation period.
- [52] Dr Kwindas version (which is disputed by the plaintiff) is that the first two probation reviews were done in November 2017, which is some six months into his probation period.

[53] There is thus a gap in the performance assessments in relation to the first probation period (spanning approximately half of the period of his employment as Senior Manager: Human Resources and Labour Relations), which is a further reason why it cannot be concluded that there was a serious breach of the contract on the plaintiff's part (in relation to his performance), entitling the defendant to terminate the contract summarily.

[54] In these circumstances, the plaintiff was entitled to be given 60 days' notice of termination of his contract.

[55] Consequently, the plaintiff has suffered damages in the amount of R216 139.30 (two hundred and sixteen thousand one hundred and thirty nine Rand and thirty cents), being the remuneration amount payable for a 60-day notice period. His damages are limited to this amount by operation of the limited damages rule.

Costs

[56] Regarding costs, both parties have been partially successful (i.e. the plaintiff has been successful with his claim for damages pertaining to his notice period, and the defendant has been successful in opposing the claim pertaining to the unexpired portion of the contract). In these circumstances, it would accord with the requirements of law and fairness for no costs order to be made.

Order

1. The defendant is ordered, within 14 days of delivery of this judgment, to pay the plaintiff an amount of R216 139.30 (two hundred and sixteen thousand one hundred and thirty nine Rand and thirty cents) as damages in respect of the breach of the 60-day notice requirement in the first portion of clause 11 of the employment contract between the plaintiff and the defendant.

2. There is no order as to costs.

R Itzkin

Acting Judge of the Labour Court of South Africa

LABOUR COURT

Appearances:

For the Plaintiff:

K Mapengo

Of: Noko Ramabya Incorporated

For the Defendant: Z Navsa

Instructed by: Cheadle, Thompson and Haysom Incorporated

LABOUR COURT