



- (1) Reportable: No
(2) Of interest to other Judges: Yes
(3) Revised

Signature

Date

THE LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: A2025-172473

In the matter between:

NAIDOO, DR DHANASAGRAM

Appellant

and

TSHWANE UNIVERSITY OF TECHNOLOGY

First Respondent

BREEDT, A N.O.

Second Respondent

COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

Third Respondent

Heard: 25 August 2026

Delivered: 27 August 2026

Coram: Molahlehi JP, Mahalelo ADJP et Van Niekerk JA

JUDGMENT

VAN NIEKERK, JA

Introduction

- [1] On 6 June 2022, the first respondent, the Tshwane University of Technology (TUT), advised the appellant, Dr. Dhanasagran Naidoo (Naidoo), that his five-year fixed-term contract, under which he was employed by TUT from 1 July 2017 to 30 June 2022, would not be renewed. Naidoo referred a dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA), contending that TUT's failure to renew his contract constituted a dismissal as defined by section 186(1)(b)(i) of the Labour Relations Act, 66 of 1995 (LRA), and that the dismissal was unfair. The second respondent (the commissioner) ruled that Naidoo had been dismissed, that his dismissal was unfair, and that TUT should pay him compensation of R1 467 657.29. On review, the Labour Court reversed the commissioner's award and held that Naidoo had failed to establish the existence of a dismissal. The Court granted leave to appeal, raising the crisp question of whether Naidoo had discharged the onus of establishing that he had a reasonable expectation that his fixed-term contract would be renewed.

Factual background

- [2] The material facts are not disputed. Naidoo was employed by TUT as an executive director: institutional effectiveness and technology, under a five-year fixed-term contract that ran from 1 July 2017 to 30 June 2022. Clause 4 of the contract read as follows:

- '4.1 This contract will commence on 1 July 2017 and will, subject to 4.4 below, terminate automatically through effluxion of time on 30 June 2022.
- 4.2 As this is a fixed-period contract, there shall be no expectations, rights or claims by the employee in regard to renewal or extension.
- 4.3 It is specifically agreed and recorded that as this contract terminates through effluxion of time, termination will therefore not constitute a dismissal.'

- [3] Clause 3.4 of the contract also warrants mention. In that clause, the parties agreed:

‘3.4 At the end of the five-year term, the employee will be appointed to another management/academic position in line with his qualifications, skills, and experience, at a remuneration package commensurate with the post level of the position and in accordance with all existing and future policies of the University and any applicable legislation.’

- [4] On 30 September 2021, clause 4.1 of the contract was amended to add the following wording, reflected in the underlined portion below:

‘4.1 This contract will commence on one July 2017 and will, subject to 4.4 below, terminate automatically through effluxion of time on 30 June 2022 renewable for a further term of five years subject to satisfactory performance.

- [5] Clauses 4.2 and 4.3 of the contract remained unamended. The insertion of what was termed the ‘renewal clause’ into clause 4.1 resulted from a decision by the executive committee of the TUT council, made in November 2016, to include such clauses in the fixed-term contracts of its senior management, subject to satisfactory performance, as a means of retaining senior staff and maintaining continuity in TUT’s operations.

- [6] It is undisputed that, during the term of his fixed-term contract, Naidoo’s performance was exemplary. The pre-arbitration minute records, as a common cause fact, that Naidoo ‘excelled in his key performance areas’. It is also not disputed that, until 2021, the period immediately preceding the contract’s termination date, Naidoo’s performance was evaluated by Prof van Staden (Van Staden), his immediate supervisor. After 1 January 2022, when Prof Twala (Twala) succeeded Van Staden following the latter’s retirement, Naidoo’s performance was not evaluated.

- [7] On 9 March 2022, Naidoo addressed a letter to his new immediate supervisor, Twala, notifying him of the impending termination of his contract, recording that he had performed well, and requesting renewal of the contract. The correspondence that followed between Naidoo and Twala reveals a fraught relationship between the two, and culminated in Twala's communication to Naidoo on 6 June 2022 confirming that the TUT would not renew the fixed-term contract but would extend it by two months (ending on 31 August 2022) to facilitate a handover of Naidoo's duties. Twala gave evidence that, upon assuming his appointment on 1 January 2022, he concluded that he should restructure the division he headed because of duplication of work or phase out Naidoo's position. He opted for the latter when he noted that Naidoo's fixed-term contract expired later in the year. His interpretation of clause 4.1 of the contract was that, provided Naidoo's performance was satisfactory, TUT could consider renewal of the contract, but there was no obligation on TUT to renew the contract. Twala conceded that he had not consulted Naidoo about his intention not to renew his fixed-term contract.
- [8] [8] Naidoo considered that the refusal to renew his contract constituted a dismissal under section 186(1)(b) of the Labour Relations Act (LRA) and that the dismissal was unfair. The dispute was referred to arbitration before the commissioner.

The arbitration award

- [9] In an award extending to some 45 pages, the commissioner summarised the evidence of Naidoo, Ms. Mokuele, TUT's executive director: human resources and transformation, and Van Staden, the former vice-chancellor and principal of TUT, all of whom testified in support of Naidoo, and Twala, the single witness for TUT. In particular, the commissioner noted Van Staden's testimony that Naidoo was an excellent performer and that the wording of clause 4.1 of the contract was intended to afford a measure of job security for senior staff who performed well, and to ensure continuity in TUT's operations. Mokuele, executive director for

human resources and transformation, supported Van Staden's account, stating that the renewal clause required no interpretation because of its clarity. Renewal was not automatic, but clearly contingent upon performance. Following the executive committee's approval, this clause became standard practice in similar contracts.

- [10] The commissioner found that TUT's council included a renewal provision in senior managers' fixed-term contracts to retain top-level talent and ensure institutional continuity. This renewal option was intended to be applied once only. On 21 September 2021, Naidoo received the document entitled "*Correction of Terms of Contract of Employment*", which formally included the renewal clause. The updated clause stated the contract "... *was renewable for a further term of 5 years subject to satisfactory performance*". The clause became an integral term of Naidoo's employment and reasonably led him to expect that the contract would be renewed, particularly given his history of excellent performance reviews. The renewal clause aligned with what Naidoo was told during his interview: that the five-year contract would be extended for another five years, provided his performance met expectations. The commissioner found further that Naidoo had consistently demonstrated excellent performance, which was never challenged. According to Van Staden, his performance was exceptional, and had he (Van Staden) remained in charge, he would have renewed the contract.
- [11] The commissioner held further that clause 3.4 of the employment contract (which provided that upon expiry of the five-year term, Naidoo would be appointed to another suitable management or academic role) further strengthened the expectation of continued employment. When he was asked if Dr Naidoo still had a role at the institution, the vice-chancellor, Professor Maluleke, reportedly said, "*that is a no-brainer*".
- [12] The arbitrator held that Naidoo had met all of his responsibilities relating to the renewal of his contract, including initiating timely correspondence with Twala regarding contract renewal. He had arranged a face-to-face meeting, which was

neither honoured nor officially cancelled by Twala. When no clarity was forthcoming, Naidoo took the issue to the vice-chancellor, prof. Maluleke, to express his concerns about the process. The fact that Twala failed to respond, effectively leaving Naidoo in a state of uncertainty until 3 June 2022, did not invalidate the legitimate expectation arising from the renewal clause.

- [13] The commissioner concluded that the most plausible explanation was that Twala acted on his own, without proper authority or full understanding, when he had informed Naidoo that his contract had ended through effluxion of time, ignoring the binding implications of the renewal clause. It appeared that no consideration was given to the legal protections provided by fair labour practices.
- [14] The commissioner concluded that the most probable inference was that Twala made a unilateral and uninformed decision to notify Naidoo that his contract had expired by the effluxion of time, without proper consideration of the 'renewable clause'. The commissioner acknowledged that the provisions of clauses 4.2 and 4.3 of the contract, recording that there was no right of renewal, did not, in themselves, preclude the creation of a reasonable expectation of renewal. As to the credibility of the witnesses, the commissioner found that Van Staden, in particular, was a frank, eloquent, and honest witness, and that, on a balance of probabilities, Naidoo had adduced sufficient evidence to establish that he had a reasonable expectation of renewal of his contract on the same terms. Further, TUT had failed to establish that Naidoo's dismissal was fair. If there were genuine operational requirements that militated against the renewal of Naidoo's contract, it remained open to TUT to follow the relevant statutory process.
- [15] The commissioner's award finds that TUT's failure to renew Naidoo's fixed-term contract constituted a dismissal and ordered that he be reinstated by no later than 12 March 2023, with payment of back pay in the sum of R1 467 657.29.

[16] TUT sought to review the award on the basis that the arbitrator had committed gross irregularities in the conduct of the arbitration proceedings and engaged in misconduct in relation to her duties as an arbitrator.

[17] There was some debate before the Labour Court about the appropriate standard of review. The Court (correctly) observed that the pleadings should be examined for their substantive content rather than their form, and that the grounds for review extended to the correctness of the arbitrator's decision. After referring to this Court's decision in *Jonsson Uniform Solutions (Pty) Ltd v Brown and Others*,¹ the Labour Court recorded that the core question on review was whether, on the evidence, the arbitrator had correctly concluded that Naidoo had established a dismissal under section 185(1)(b) of the LRA. The Court then stated:

'In the context of this matter, Dr Naidoo relies on the corrected clause 4.1 and the evidence of Professor van Staden to support his case that he had reasonably expected his contract to be renewed for another period of 5 years, whilst clause 4.2 of the contract remained unchanged that:

'4.2 As this is a fixed-period contract, there shall be no expectations, rights or claims by the employee in regard to renewal or expectation.'

[18] From that premise, while noting that in terms of the applicable authorities a contractual term to this effect did not preclude a finding of a reasonable expectation of renewal of the contract, the Labour Court concluded that the commissioner's decision was incorrect. The Court's reasoning is based on the following:

'25.1 There is a dispute as to whether the fixed-term contract of Dr Naidoo was automatic or was going to be renewed based on clause 4.1, the suspension of the condition of satisfactory performance.

25.2 Dr Naidoo sought to rely on clause 4.1, and the evidence of Professor Van Staden and their interpretation of clause 4.1 that he had a reasonable

¹ [2014] ZALAC 709 (13 February 2014).

expectation that his fixed-term contract would be renewed; whilst replying (sic) on the contract, he states that the position still exists.

25.3 There is a dispute whether the contract provides for further expectation in that at the end of the five-year term then Dr. Naidoo will be appointed to another position.

25.4 According to the applicant, clause 4 does not mean that the contract will be automatically renewed, as it was a fixed-term contract, it came to lapse through the effluxion of time.

25.5 In my view, even if clause 4.1 that the contract of Dr Naidoo would be automatically renewed in light of clause 4.2, which clearly states that he cannot have expectations of his contract to be automatically terminated. This quagmire can only be resolved through interpretation, which is not the case herein.

25.6 Furthermore, to the extent that Dr Naidoo sought to rely on the terms of the contract, that issue raises a different dispute altogether under the provisions of section 24 of the LRA, as was correctly pointed out on behalf of TUT. That position will fall short of the jurisdictional fact of section 186 (1)(b) of the LRA.

[26] It follows from the above observations that the only conclusion to be reached is that it cannot be said in the light of the prevailing facts and circumstances that Dr Naidoo had placed facts before the commissioner, which when objectively assessed, could have led to a conclusion that he had a legitimate expectation that his fixed term contract would be renewed on the same or similar terms.'

[19] On this basis, the arbitrator's award was reviewed and set aside and substituted with an order dismissing Naidoo's referral for lack of jurisdiction.

Grounds for appeal

[20] The appellant submits that, among other things, the Labour Court erred by finding that Naidoo failed to adduce sufficient evidence to establish a reasonable

expectation of renewal of his contract, that the renewal clause was not the sole objective indicator that the employee's contract would be renewed, and that the Court failed to consider the totality of the evidence.

Applicable legal principles

[21] The legal principles that apply to the application of section 186(1)(b) of the LRA are well established. Section 187(1)(b) defines a 'dismissal' to include a failure to renew a fixed-term contract on the same or similar terms when the employee reasonably expected the employer to renew it. The purpose of including s 186(1)(b) in the LRA was explained by the Labour Court in *Biggs v Rand Water* (2003) 24 ILJ 1957 (LC) as follows:

'Section 186(b) was included in the LRA to prevent the unfair practice of keeping an employee in a position on a temporary basis without employment security until it suits the employer to dismiss such an employee without the unpleasant obligations imposed on employers by the LRA in respect of permanent employees.'

[22] Put another way, section 187(1)(b) is intended to prevent the abuse of fixed-term contracts by repeatedly renewing them in circumstances where the work that is the subject of the contract is ongoing. While employees such as Naidoo, engaged under long-term contracts, do not fall into the category of vulnerable, lower-paid employees whose short-term contracts are continuously rolled over to deny them protection against unfair dismissal, the courts have repeatedly held that the constitutional right to work extends equally to all employees.

[23] The test to be applied to determine the existence of a dismissal in these circumstances is equally well established. The expectation of renewal must be both subjectively held by the employee and objectively likely, in the light of all the facts, that the expectation was reasonable. In *Joseph v University of Limpopo & others*² this Court held:

² (2011) 32 ILJ 2085 (LAC).

[35] The onus is on an employee to prove the existence of a reasonable or legitimate expectation. He or she does so by placing evidence before an arbitrator that there are circumstances which justify such an expectation. Such circumstances could be, for instance, the previous regular renewals of his or her contract of employment, provisions of the contract, the nature of the business, and so forth. The aforesaid is not a closed list. It all depends on the given circumstances and is a question of fact.'

[24] When a commissioner's ruling on the existence of a dismissal is sought to be reviewed, this Court has made clear that the test for reviewing a jurisdictional issue requires an objective inquiry and that reasonableness is not the standard of review.

[25] There was some debate when the appeal was heard about the pleadings filed by TUT in the review proceedings, particularly whether they properly disclosed a basis for review under the applicable standard of correctness, rather than the award's reasonableness. It is clear that, although some reference was made to the reasonableness standard articulated in *Sidumo v Rustenburg Platinum Mines*,³ the founding affidavit adequately addressed the correctness of the commissioner's award.⁴ Any uncertainty was dispelled in the replying affidavit, in which the correctness standard was clearly articulated.

[26] Regrettably, the Labour Court's reasons for disagreeing with the commissioner's award are far from clear. Having eschewed the terms of the contract as the sole basis for assessing any subjective expectation of renewal that is objectively reasonable, the Court appears to have fallen into the trap of treating those terms, especially clause 4.2, as an overriding consideration, and the dispute as one that concerned the interpretation of clause 4 of Naidoo's contract.

[27] While it is correct that clause 4.2 was no doubt intended to disabuse Naidoo of any automatic expectation of renewal, the courts have consistently held that

³ (2007) 28 ILJ 2405 (CC).

⁴ See *Cape Peninsula University of Technology v Kabengele & others* (2024) 45 ILJ 1973 (LAC) where this Court held that despite the express pleading of the unreasonableness of an arbitration award, it was sufficient that the applicant had in a number of respects taken issue with its correctness.

clauses to this effect are not determinative of any subjective expectation of renewal, nor the objective reasonableness of such an expectation. If that were not so, the purpose of the protection established by section 186(1)(b) could be easily undermined by unscrupulous employers using contractual terms such as clause 4.2. But that is not to say that such terms are always disregarded - the employer's refusal to renew must be considered in light of all prevailing facts and circumstances, including any relevant contractual terms.

- [28] The commissioner's award identifies several factors supporting the conclusion that Naidoo's subjective expectation of renewal was objectively reasonable. The Labour Court addressed none of them. These factors included the terms of the contract, particularly the history of negotiating the 'renewal clause', its purpose, and its incorporation into the contract; the nature of Naidoo's work; and Van Staden's intimation to Naidoo that his contract would be renewed.
- [29] The undisputed evidence showed that in 2016, Van Staden submitted to the executive committee of council a recommendation to approve a 'renewable clause' in future fixed-term contracts with executive managers. On 2 December 2016, the executive committee approved the recommendation. After his 2017 appointment, Naidoo requested a revision of his contract terms to include a renewable clause. This was done on 29 September 2021.
- [30] Naidoo's evidence was that four senior executives were affected by the implementation of the renewable clause in 2016. Two of them had their contracts renewed based on their satisfactory performance. This evidence was corroborated by Van Staden. Naidoo further testified that the continuous nature of his work created an expectation of renewal. He also testified about a discussion with the vice-chancellor in February 2022, when he inquired about his continued role at TUT. The response was that it was a 'no-brainer'.
- [31] To the extent that counsel for TUT sought to persuade us that Naidoo's increasing concern about the renewal of his contract, expressed during the months shortly before the expiry of his contract, was inconsistent with any

subjective expectation of renewal of the contract, the correspondence between Naidoo and Twala exhibits no more than anxiety on Naidoo's part to obtain certainty about his immediate future, in light of assurances that had been given that his contract would be renewed. This is hardly surprising given that Naidoo had anticipated that the renewal of his contract would be a formality and planned his affairs accordingly.

[32] The Labour Court failed to assess the evidence adduced before the commissioner in its totality. Had it done so, it would have concluded that the primary issue was not the interpretation of clause 4 of Naidoo's contract, and that the contract's terms were no more than a convenient starting point. In particular, the retention of clauses 4.2 and 4.3 when the renewal clause was agreed did not, in itself, defeat any reasonable expectation of renewal that may have arisen under the renewal clause. Further, although Naidoo's evidence that the renewal clause created a right to automatic renewal subject to acceptable performance reflected a mistaken belief on his part, it was not fatal to the existence of either a subjective expectation of renewal of the contract for a further five-year period or the reasonableness of that belief.

[33] In summary: the terms of the contract (and, in particular, the renewal clause and the circumstances in which it was inserted into the contract), considered together with other surrounding facts and circumstances, including the ongoing nature of the work performed by Naidoo, his conversations with senior members of TUT's management regarding his further engagement, TUT's treatment of other senior employees engaged on the same terms, all serve to establish a subjective intention of renewal that is objectively reasonable. The appeal thus stands to be upheld. Neither party seriously pursued the issue of costs, and for the purposes of section 179 of the LRA, each party is to bear its own costs.

Order

[34] I make the following order:

1. The appeal is upheld.
2. The order granted by the Labour Court is set aside and substituted by the following:

‘The application is dismissed.’

André van Niekerk

Judge of the Labour Appeal Court of South Africa

Molahlehi JP and Mahalelo ADJP *concur*.

APPEARANCES:

For the Appellant : Adv F Venter

Instructed by: Beech Veltman Inc.

For the Respondent : Adv R Itzkin

Instructed by: ENS Africa Inc.