

SOUTH AFRICA / JUDGMENT

Makofane and Others v Patroland Special School and Others (JS696/2021) [2021] ZALCJHB 371 (20 October 2021) [2021] ZALCJHB 371

COURT

Labour Court Johannesburg

BEFORE

F. Coetzee

CASE / FILE NUMBER

JS696/2021

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

Not

of interest to other judges

Case

no: JS 696-2021

n

the matter between:

DITIRO

MAKOFANE First

Applicant

BEREL

MAHOLOBELA Second

Applicant

DELIVIA

MASHABELA Third

Applicant

and

PATROLAND SPECIAL

SCHOOL First

Respondent

DEPARTMENT OF EDUCATION

NKANGALA DISTRICT

MANAGER Second

Respondent

MEC FOR EDUCATION

MPUMALANGA Third

	Respondent
Heard:	20 October 2021 Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and release to SAFLII. The date and time for hand-down is deemed to be 10h00 on 20 October 2021.
Summary:	Set aside termination of contracts

JUDGMENT

COETZEE AJ

- [1] The applicant agreed that the matter could be decided on paper.
- [2] The applicants approach this Court for an order declaring the termination of their contracts of employment invalid and to set the termination aside. Secondly they want an order that their contracts are indefinite in duration in terms of section 198B(5) of the Labour Relations Act , 66 of 1995.
- [3] The applicants stated that they were appointed on a 12-month fixed term contract which was extended for another 3 months and later a further 3 months to the end of June 2021.
- [4] The Department informed them on 1 June 2021 that their contracts would not be extended and that their employment terminated at the end of June 2021.
- [5] They believe that they have been discriminated against, as 8 other employees were in a similar position but their contracts have not been terminated.
- [6] For the termination to be unlawful, they needed to plead breach of contract. They have not done so, and the Court does not know what notice would have been required. If their argument is that their contracts were of an indefinite nature, then to succeed with a claim for breach of contract, they needed to plead the terms of the contract and the breach thereof. They have not.
- [7] The thrust of their case is that they understand the correct procedure was to go through the CCMA, but they wished their matter to be heard urgently. The Court struck the matter from the urgent roll.
- [8] This Court has no jurisdiction to adjudicate alleged unlawful terminations of contracts of employment. The applicants needed to follow the correct procedure to have the alleged unfair and discriminatory termination of their contracts adjudicated.

- [9] After the termination the argument that section 198B(5) applies, becomes moot. In any event the applicants have not pleaded the terms of their agreements and the alleged breach thereof.

Order

[10] I make the following order:

[10.1] The application is dismissed.

F. Coetzee

Acting Judge of the Labour Court of South Africa

Appearances

For the applicant: In

Chambers

For the Respondent: In Chambers

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