

SOUTH AFRICA / JUDGMENT

Nonceba v Human Sciences Research Council (2017/5177) [2017] ZAGPJHC 355 (17 November 2017) [2017] ZAGPJHC 355

COURT

South Gauteng High Court, Johannesburg

BEFORE

S.E. Weiner

CASE / FILE NUMBER

2017/5177

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

REPUBLIC OF SOUTH
AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL

DIVISION, JOHANNESBURG

CASE

NO: 2017/5177

Reportable

Of

interest to other judges

Revised.

17/11/2017

In the

matter between:

KOBO

FAITH

NONCEBA Applicant

and

HUMAN

SCIENCES RESEARCH

COUNCIL Respondent

JUDGMENT

WEINER, J:

INTRODUCTION

- [1] The applicant in this matter seeks an order for the payment of an amount of R4 994 769.99 plus interest.
- [2] The applicant contends that this amount is due and owing to her in terms of a fixed term employment contract (the contract) which she concluded with the respondent.
- [3] It is common cause that proceedings in the Commission for Conciliation, Mediation and Arbitration (“CCMA”) resulted in it being found that the contract was unlawfully terminated and accordingly the applicant had been unfairly dismissed. As a result of this order handed down on 15 October 2016, the applicant was paid an amount of R1 104 537.00.
- [4] The applicant now contends that she is also entitled to be paid contractual damages for the balance of the contract.

TERMINATION

- [5] Clause 11 of the contract provides as follows:

“11. Termination

11.1 Either party may terminate the contract of employment notice of not less than:

11.1.1 ...

11.1.2

11.1.3 three months after you have been employed for one year.

11.2 Notice must be given in writing.....notice in terms of 11.3 must be given on or before the first day of a month.

11.3 Notwithstanding the provisions of 11.1, either party may terminate the contract of employment without notice for any cause recognised by law as sufficient.

- [6] It is common cause that the respondent terminated the contract on 27 February 2017 in writing. The letter records that:

“13. You will not be required to work during your notice period and your salary during the notice period will be paid to you, as per usual. Today will be regarded as your last working day.”

- [7] It is also common cause that the applicant was paid three months’ salary in accordance with the notice period from March

2017. Applicant contends that the termination notice amounted to an unfair dismissal and accordingly she is entitled to damages in terms of the contract.
- [8] The applicant relies on Clause 11.3 in contending that the respondent dismissed her with notice for a “cause not recognised by law to be sufficient” and this was the finding of the CCMA. The applicant submits that the respondent would only be entitled terminate the contract if the applicant was in material breach of the contract, despite the termination clause.
- [9] Clause 11.3 provides for termination without notice. This, according to the contract can only be done when there is a cause recognised by law as sufficient”.

Unfair Dismissal

- [12] The applicant’s contention is that, the CCMA having found that the termination of her employment was unfair, it follows that she is entitled to the contractual damages for breach of the contract.
- [13] The respondent contends that the contract does not require a material breach on the part of the applicant for the respondent to terminate the contract on notice.
- [14] The fact that the CCMA may have found that there was an unfair dismissal does not detract from the contractual provisions which provide quite clearly for a termination on notice.
- [15] In *Hartslief v Lamontville Golden Arrows Football Club*[1], reference was made to the cases upon which the applicant relies upon in this case, namely, *Buthelezi v Municipal Demarcation Board*[2] and *Fedlife Assurance Ltd v Wolfaardt*[3]. In the *Hartslief* case, Pillay J dealt with the applicant’s contention that a fixed term contract cannot be terminated for operational reasons. As the court pointed out:
- [11] “A significant difference between those cases and this one...is that the contract in those cases did not reserve the right for a party to terminate the contract for operational reasons. In this case the parties did reserve such a right for themselves.”
- [16] Similarly, in *Makoti and Maritzburg United Football Club*[4], the Court held that “a fixed term contractcan only be terminated on the grounds of misconduct or incapacity or for a material breach of the contract. Additional grounds for ending the contract would be if the contract incorporates a clause permitting termination on notice...”
- [17] In *Buthelezi supra*, Jafta AJA concluded that even a fixed term employment contract can be terminated if it provides for such termination on notice[5].
- [18] This provision has also been referred to in *Lottering v Stellenbosh Municipality*[6], where Cheadle AJ stated:

“If the contract is for a fixed term, the contract may only be terminated on notice if there is a specific provision permitting termination on notice during the contractual period...”

[19] The applicant's contention is that even though the contract provides for termination on notice, the respondent still has an obligation to show valid reasons (recognised by law) for terminating the applicant's employment.

[20] Having regard to the authorities as set out above, this contention cannot be correct. The termination clause permitted the respondent to terminate the contract on three months' notice, which it did.

[21] The respondent also refers to the fact that the contract provided:

3.1 You will be on probation for 2 years from the date of your appointment or for the period equivalent to your contract, whichever is less from the date of your appointment.

3.2 Your appointment will be confirmed if, by the end of the probation period, you have demonstrated your ability to do the job which you have been employed to do and your ability to work in the HSRC team. Performance appraisals will take place during the period of your probation."

[22] The respondent contends that the applicant's employment was never confirmed in terms of clause 3.2. The respondent also submits that the reason the contract was terminated was as a result of the applicant's non-compliance with the provisions of 3.2 in that the applicant failed to operate in the team environment.

[23] The respondent accordingly relied on 2 grounds to contest the applicant's claim. Firstly, that the contract provides for termination on 3 months' notice and, secondly, that the applicant did not comply with her obligations and accordingly the respondent was entitled to terminate on that basis (the probation issue).

[24] Having regard to the court's finding that the contract was validly terminated by notice, it is not necessary to decide the probation issue.

[25] Accordingly, the applicant has not made out a case that she is entitled to any damages based on the contract and the following order is made:-

The application is dismissed.

The applicant is to pay the respondent's costs.

S.E. WEINER

JUDGE OF THE HIGH COURT

Attorney for the applicant: Mamatela Attorneys

Counsel for applicant: Advocate M. Qofa

Attorney for respondent: Van Zyl Embrahim Cook Attorneys Inc

Counsel for respondent: Advocate I.L. Posthumus

Date matter heard: 6 September 2017

(additional heads of argument were subsequently filed by the parties on 27 September 2017 and 2 October (2017))

Judgment date: 20 November 2017

[1]

[2007] 28 ILJ 638 (LC)

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

[3]

[2001] 22 ILJ 2407 (SCA)

[4]

(2010) 31 ILJ 2791 (ARB)

[5] @2320

[6]

[2010] 12 BLLR 1306 (LC) at para 14

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPJHC/2017/355.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/nonceba-v-human-unknown-topic-agpjhc-2017>

Prepared on 9 October 2026 · Esheria