



**IN THE GENERAL PUBLIC SERVICE SECTORAL BARGAINING COUNCIL**

**Held in Centurion**

**Commissioner: Elaine Moleko**  
**Case No.: GPBC 716/2024**  
**Date of Award: 25 July 2025**

**In the Dispute between:**

**PSA obo N RADEBE & 1 OTHER**

**(Union/Applicant)**

**and**

**DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT**

**(Respondent)**



## **PARTICULARS OF PROCEEDINGS AND REPRESENTATION**

1. This matter was enrolled for arbitration in terms of section 191(5) (a) of the Labour Relations Act 66 of 1995 and was heard on 01 October 2024, 31 March, 14 July 2025
2. The Applicants, Nqobile Radebe and Fumani Mahlale were represented by Archie Sigudla, while the Respondent, Department of Forestry, Fisheries and the Environment, was represented by Advocate M Mahambi.
3. The hearing was conducted in English and was recorded.

## **THE ISSUE IN DISPUTE**

4. I am required to determine whether the Respondent has created an expectation that the Applicant's contract would be renewed and to determine whether the termination of contract on 30 April 2024. constituted an unfair dismissal or not.
5. The Applicant were employed as a Fixed- Term contracts by the Respondent. Their contract was rolled over from 2015 2016 2017, 2018, 2021 up to 2024. They alleged that they were dismissed on 30 April 2020 and were not given sufficient notice of termination in terms of the labour Relations Act.
6. Applicant party submitted a bundle of documents which is marked bundle "A", while the Respondent party submitted a bundle which is marked as Bundle "R"1, 2 and 3.
7. On 19 April 2024 they received a letter advising them about the expiry of contracts on 30 April 2020, the letter signed and 07 April 2024.

## **SUMMARY OF EVIDENCE**

### **Respondent's case**

#### **Tumelo Morule**

8. The Respondent presented evidence through Tumelo Morule, the Deputy Director Organisational Development. She admitted that the function of mapping is essential to the Department, and they are still in need of that function.
9. She testified that the Department of Public Service and Administration (hereinafter referred to as "DPSA") issued a moratorium to all the public service due to fiscus for the Department to minimize their spending.
10. She further testified that they are looking in employing the services of the service provider to perform the functions of the Applicants but there is no budget.
11. The witness testified that there is still no budget for the position.



### **Thabo Gadebe**

12. He testified that indeed there was an attempt to extend the contracts of the Applicants, but the motivation was declined.
13. He further testified that they communicated with the Manger who informed the employee verbally before they can issue the notice of termination letter.
14. He confirmed that the notice was not issued on time and was not in accordance with the law.
15. He presented a Department of Public Service and Administration (hereinafter referred to as "DPSA") directive which was issued to all the Department to look into the financials.
16. He stated that the directive does not specifically say that the Fixed term contracts must be terminated.

### **Applicant's evidence**

#### **Nqobile Radebe**

17. The Applicants adduced evidence through Nqobile Radebe who testified that she started working for the Respondent in April 2015 up to 31 March 2016. She was then called back and issued with another contract from July 2016 to December 2016 as Office Administrator. Whilst in that contract she applied for a fixed Term Contract position where she was appointed as Fixed- Term Contract from January 2017 to December 2017.
18. The witness testified that in 2017, before the contract lapsed, the Department embarked on a process of recruitment which process resulted in January 2018, Ms Radebe to be appointed for a period of 3 years until 2021.
19. On or about April 2021, the contract was extended for a period of 3 years until April 2024, but their contracts were terminated while their functions were still required.
20. She submitted that they had an expectation to be renewed as FTC and because their performance agreement lapsed in the following year. 2025.

#### **Fumani Mahlale**

21. Fumani Mahlale led evidence for the Applicants and testified that he commenced his employment with the Department with effect from 19 January 2015 as an Admin Officer, which contract was for a period of six (6) months and lapsed on or about July 2015. The contract was extended from 1 August 2015 to 31 December 2016.



22. On or about January 2017, subsequent to a process of recruitment, he was given a new contract of employment which was for a period of 12 months, which is a new contract.
23. On or about January 2018, he was given another contract again on 23 January 2018, for a period of 3 years which appointment would have lapsed in 2021.
24. He testified that the contract was extended in April 2021 until April 2024.
25. He testified that although they went to HR for the documents, they still had a reasonable expectation to be that the memo would be reconsidered, and they will be granted extension.

### **ANALYSIS OF EVIDENCE AND ARGUMENTS**

26. Section 186 (1) (b) of the LRA stated that “dismissal means that “an employee employed in terms of a fixed term contract of employment reasonably expected the employer to renew a fixed term contract of employment on the same or similar terms, but the employer offered to renew it on less favorable terms, or did not renew it, or
27. Fixed term contracts are part and parcel of employment options to employ employees. It is trite law that employers should offer genuine fixed-term contracts and, in doing so, not to avoid offering indefinite employment.
28. It should be remembered that one of the core elements of our Constitution is employment security. The comments made by Cheadle is relevant in this case where he contended that “ the very purpose of s186 (1) (b) was to prevent employers from concluding a series of short term contracts with employees which can then be brought to an end without reason at the termination of the fixed-term contract and , as a result of which , employees could then be denied a range of protection, including social security and other benefits which are enjoyed by employees in an indefinite contracts of employment. Accordingly, the interpretation of s186 (1) (b) should be informed by this purpose, that is to prevent employers from using their freedom of contract to avoid what would otherwise be the creation of obligations in terms of the LRA and thus erode the concomitant rights of employees”
29. The above view is well supported by the Constitutional court in NUMSA V Bader Bop (Pty) Ltd and Another (2003) 24 ILJ et 305 (CC) at paragraph 37 where the court reasoned as follows “if (that provision) is capable of a broader interpretation that does not limit fundamental rights, that interpretation is preferred. Thus, when the section refers to the renewal of a fixed term of a “Fixed- term contract”, its purpose is to prevent the abuse of a “rolling over contracts” in order to avoid the fair labour practice obligations which are set out in s23 of the Republic of South Africa Constitution Act 108 of 1996 and which in turn, are given content in LRA”.
30. The crux of this dispute is premised on the fact that there was a roll- over of the contracts, this occurred on several occasions. The contracts were renewed on 12-month periods. The issue of roll- over of contracts was addressed in King Sabata Dalindyebo Municipality v CCMA and Others (2005) 7 BLLR 695 where the court held” that the employer’s conduct in rolling renewals of employee’s fixed term contract every year and the fact that work and money to renew it was available created an expectation of renewal”.
31. It is a common cause that the Applicant’s contracts were rolled over on more than one occasion which they alleged, created an expectation that the contract would be renewed in future. It is trite law that expectation should be reasonable. In the circumstances it can be said that the Applicant could not be faulted to





- reasonably believe that their contracts would be renewed especially when they were informed that a request to renew their contract was submitted. This was never rebutted or proven otherwise.
32. Looking at the chronology of the events that unfolded from the inception of these contracts of employment. The Applicants have testified that their contracts started off in 2015/2016. These contracts were of a fixed term period of 3 years.
  33. Pursuant to expiry of such three- year contracts, the employees were informed that the renewal of their contract was declined due to a directive from the Minister. Further than that they were informed that there were no funds available.
  34. I must hasten to add that the trend of yearly renewals from the onset was a departmental policy issue rather than a legislation challenge.
  35. The Applicants having worked in excess of 12 months for the Respondent were entitled to 4 weeks' notice of termination of their contracts. No notice came to the employees by 01 April 2024 and in fact they are waiting for the approval of their contract extension. That is when a reasonable expectation was created because Management informed them of the submitted extension to renew.
  36. After the request to renew contract the Applicants therefore continue to work as they were still officially handed tools of trade accompanied by access to network.
  37. The employees having continued to work, they are shocked to receive the news that their contract has expired and will not be renewed through their Deputy Director who earlier told them that their functions are needed and for that reason the request to renew was submitted approval. So telling them that their contracts came to an end on 30 April 2024 was a shock.
  38. The case of the Respondent is that their contracts had a clause which informed them that they cannot claim to have reasonable expectations for the renewal of their contract. In addition, the Respondent argued that the employees went to Human Resources department to request for documents after they were informed that the motivation to extend their contract was declined, and they use that action of the Applicants to prove that the Applicants cannot have "a reasonable expectation" for the renewal/extension of contracts, as they knew that their contract will be terminated on 30 April 2024.
  39. After being verbally informed that the motivation was turned down, still there was no formal letter or notice of termination issued until 19 April 2024. So, from the period of being told about the declined motivation and the 19 April 2024, the Applicant still believed that they will still be extended as there was no formal letter confirming the termination, a reasonable and vulnerable person will also think in the same way.
  40. I cannot be convinced that the Applicants were the only ones who had a reasonable expectation of renewal, because, if it was the intention of the Respondent to terminate their contract on its expiry date, they would have issued notices on 01 April 2024. I am also not influenced that the Respondent believe that the Applicants were unreasonable in expecting the renewal of their contract when they gave them a reason to expect a renewal when they are the ones who submitted a motivation to extend their contract.
  41. I fail to be influenced by the argument of the Respondent in that when submitting a motivation to extend the Applicants contracts, the directive was there and has been there since 2020 and the same directive was overlooked and never had any effect on the employment of FTC's since it was issued.
  42. Since the notice of termination should have been served earlier than the 19 April 2024. In my view, both the Applicants and the Respondent had the same and similar expectation that the contract of the Applicants will be renewed/ extended and based on the history of the roll-over it is not unreasonable to think alike and to hope for the same outcome.



43. The fact that employees went to request for the documents cannot be used as a determining factor that the Applicants did not have expectation for the extension. The act of requesting the documents happened after the Manager informed them that the motivation to extend their contract was not approved, however there was no formal notice served yet. Again, this proves that the Respondent was still hoping for positive change of mind by the Director- General or whoever disapproved of the motivation. It does not make sense why they submitted motivation in the first place if their actions resulted from the, again why were they not served with notice immediately after the motivation was disapproved?
44. Stepping back prior to 19 April 2024 the Department received a Directive from DPSA dated 20 October 2020. The Respondent submitted that it is that directive which caused the contracts of the Applicants to be terminated. It is implausible because after 20 October 2020 the Respondent renewed the Applicants contract in 2021 and also intended to renew it again in April 2024. On two occasions of renewal the directive was already in place, but it did not stop the Respondent from employing the Applicants.
45. As we conclude this matter in July 2025, the operation of such a directive had lapsed and no longer in operation, and the Respondent witness, Ms. Morule, submitted that it is in a process to source a service provider who will perform the same functions of the Applicants. It is startling because the service provider also needs to be remunerated, they don't offer their services for free, so what was the Respondent solving in terminating the Applicants?
46. In my view I cannot be convinced that the directive was the reason for termination as the office which must observe the directive did not honour and implement it. If that is the case, then it means there is no valid reason why they were terminated in April 2024.
47. In that directive, the DPSA outlines control measures to be implemented on PERSAL and PERSOL to support Executive Authorities operating within the MTEF and financial ceilings for the departments, when creating and filling posts. This must be done in line with the Departments' structure as concurred with the Minister for the Public Service and Administration.
48. This directive does not state that the fixed term employment must be done away with or be terminated, instead it requires all departments to manage their financials when they decided to fill the vacant posts. In the case of the Applicants, there was not recruitment process to fill in the vacant posts, but they were employed on temporary basis.
49. I had to ask for the same directive since it has been verbally referred to by the witnesses of the Respondent without showing proof of such to me. Furthermore, there was no evidence led to prove that the Departmental had budget or financial constraints in 2024 or at the time of terminating the contracts of the Applicants.
50. *Res ipsa loquitur*, the facts speak of the department really pushing these employees under the bus, its heart wrenching, its illegal, it is against the spirit of the constitution to which they are the custodians. It leaves a bitter taste in the mouth.
51. In SA Rugby the Labour Appeal Court per Tlaetsi JA summarizes the meaning of s 186(1)(b) of the LRA as follows at para 43: 'What s 186(1)(b) provides for is that there would be a dismissal in circumstances where an employee reasonably expected the employer to renew a fixed-term contract of employment on the same or similar terms but the employer only offered to renew it on less favorable terms or did not renew it. The operative terms in s 186(1)(b) are, in my view, that H the employee should have a reasonable expectation, and the employer fails to renew a fixed-term contract or renews it on less favorable terms. The fixed-term contract should also be capable of renewal.' [34] Court then went further to summarize what needs to be done to satisfy the objective tests as follows at para 44: 'The appellants carried the onus to establish that they had a "reasonable expectation" that their contracts were to be renewed. They had to place facts



*which, objectively considered, established a reasonable expectation. Because the test is objective, the enquiry is whether a reasonable employee would, in the circumstances prevailing at the time, have expected the employer to renew his or her fixed-term contract on the same or similar terms. As soon as the other requirements of s 186(1)(b) have been satisfied it would then be found that the players had been dismissed, and the respondent (SA Rugby) would have to establish that the dismissal was both procedurally and substantively fair.'*

52. In light of the above caselaw, it is pertinently clear that the Applicants have shown that they had a reasonable expectation. On the subjective front, the Applicants held the belief that their contracts would be renewed, on the same terms and conditions because of the numerous other times that such contracts had been renewed. Fumani Mahlale led evidence that was undisputed that he was a fixed term employee for a period of 6 years and couple of months.
53. The Respondent could not explain why if they planned to terminate the contract on 30 April 2024, did they fail to issue a notice of termination within the stipulated timeframe. Therefore, I have a reason to believe that if the Respondent themselves were still hoping for a renewal even after a Directive was issued in 2020, that the Applicants had indeed a reasonable expectation for the renewal of their contract.
54. The directive which is used as a reason for termination started operating from 01 October 2023 and ended on 31 March 2025, that means it has expired and no longer valid.
55. Nature of the business shows that the employer is the government. It is the government's mandate not to only create employment but to retain it. There were no business operation requirements that dictated that the employment contract should not be renewed.
56. In *Dierks v University of South Africa*, it was held that an evaluation of all the surrounding circumstances must be considered such as:
  - a) the significance or otherwise of the contractual stipulation, agreements,
  - b) undertakings by the employer,
  - c) or practice or custom in regard to renewal of the employment,
  - d) the availability of work,
  - e) the purpose of or the reason for concluding the fixed term contract,
  - f) inconsistent conduct,
  - g) failure to give reasonable notice,
  - h) and the nature of the employer's business.
  - i) This list of criteria is not exhaustive, and it may well be that other factors also need to be considered.
57. In *SACTWU & another v Cadema Industries (Pty) Ltd* [2008] 8 BLLR 790 (LC), the Labour Court found that the employers' decision not to renew a fixed term contract is unfair. There had been repeated renewals over a four (4) year period. Sewing work was available for the employee. She had satisfied a reasonable expectation of renewal. The employer contended that the termination was for operational reasons but led no evidence in this regard. The court held thus in circumstances where the contract is not renewed because of operational requirements and the employee has a reasonable expectation that that contract



would be renewed, the employer is obliged to comply with the operational requirement procedures for the dismissal, to be procedurally fair. And for the dismissal to be substantively fair, in these case circumstances, the employer must prove that the dismissal was for a valid and legitimate reason. (The principle: work was available for the employee to do, and the employee could do it).

58. The department is obliged to comply with the stipulated procedure before terminating the contract and furthermore, if it was operational requirement that necessitated the termination, to comply with the procedure thereof.
59. It has never been proven that the nature of work for which the Applicant was employed for is of a limited or definite duration. The Respondent failed to prove or to demonstrate any other justifiable reason for fixing the term of contract.
60. The Applicants were seriously prejudiced as they had depended on the Respondent for more than six (6) years, and it was unforeseeable that the Respondent will terminate their contract retrospectively on 30 April 2024.
61. The Applicant's depended on the department and had no other means to earn salary as they spent more years with the department whereas the Respondent who is a public enterprise.
62. It is thus my finding that the evidence before me, objectively assessed shows at the very least that the Applicants had an expectation of renewal of their contracts on the same terms and conditions.
63. The Applicants seek an order to be absorbed permanently or that their contracts are renewed on the same terms and conditions, I see no reason as to why I should not award the Applicants the relief sought.





### **AWARD**

I make the following award:

64. That the non- renewal of the Fixed –Term Contracts of the Applicants, Nqobile Radebe and Fumani Mahlale, amounted to unfair dismissal.
65. That the Respondent, Department of Forestry, Fisheries and the Environment, created a reasonable expectation to renew the Fixed Term Contracts, therefore, the Respondent, is ordered to renew a Fixed Term Contracts of the Applicants on the same or similar terms that prevailed at the time of their dismissal.
66. The Applicants are ordered to report for work on 15 August 2024.
67. That the Respondent is ordered to pay the Applicants a compensation R158 395, 50, which is equivalent to six (6) months' salary,  $R26, 399,25 \times 6 = R158 395,50$  (one hundred and fifty-eight thousand three hundred and ninety-five rand and fifty cents), for the unfair dismissal.
68. The Respondent is further ordered to pay the Applicants one month salary, which is an amount of R26 399, 25 (twenty-six thousand three hundred and ninety-nine and twenty-five cents), for failure to follow stipulated procedure of terminating a contract.
69. All payments ordered must be affected within (30) thirty days after the Respondent, Department of Forestry, Fisheries and the Environment received this award.

**GPSSBC Commissioner:**

**E V Moleko**

**Signature:**

