

## The Labour Court Seals Remedies For Termination of Fixed Term Contracts

When an employer-employee relationship terminates, the last hope for the employee is terminal benefits. Payment of terminal benefits depends on the nature/ type of the contract of employment and the manner in which the employment contract was extinguished.

In most instances, termination of an employment contract occurs when an employer ends the contract, where there is resignation by an employee or on expiry of time in a fixed contract.

Whenever there is a termination by an employer, most employees feel aggrieved and eventually refer labour disputes to the Commission for Mediation and Arbitration (*"The Commission"*), challenging such termination and claiming remedies for unfair termination. In most cases, employees desire the Commission to declare such termination unfair and derive remedies under the Employment and Labour Relations Act (Cap 366 R.E. 2019) – *"The Act"*.

The remedies, when a termination is deemed unfair include reinstatement, re-engagement and/or compensation. This updaters focuses on remedies available to employees on termination of fixed term contracts.

In the past, the Commission awarded compensation of twelve-month salaries as a remedy for unfair termination to employees who were under fixed term contracts. This was a result of such employees referring to the Commission labour disputes on unfair termination, as Complainants (employees) could not distinguish the types of contracts under which they were employed.

One could be forgiven by arguing that the confusion emanated from the Act itself. On reading sections 36, 37, 39 and 40 of the Act, the proscription of employees under fixed term contracts to refer disputes on unfair termination is not expressly provided. Thus, it would seem befitting to argue that such proscription entirely depends on judicial interpretation of the law, i.e. the Act and the Employment and Labour Relations (Code of Good Practice), G.N. No. 42 of 2007, specifically rule 3(1)(c).

This confusion made employees under fixed term contracts or contracts for specific tasks to challenge their termination as unfair, especially when the same ended before the expiry of the term or before completion of the task subject to such contracts.

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The High Court of Tanzania (Labour Division)-“*Labour Court*”, has had an opportunity to interpret the law which resulted to the adoption of a general rule that remedies for unfair termination are not available to employees who are under fixed term contracts i.e., employees under fixed term contracts, generally, cannot refer disputes on unfair termination to the Commission, except in very limited cases.

In **Mtambua Shamte and 64 Others v. Care Sanitation and Suppliers, Revision No. 154 of 2010**, the Labour Court put forward this general rule, following a dispute on unfair termination by employees who were under fixed term contracts. The Court held that, “*principles of unfair termination under the Act do not apply to specific task or fixed term contracts which come to an end on the specified time or completion of a specific task*”.

The said decision not only effectively barred referral to the Commission of labour disputes on unfair termination arising from fixed term contracts or contracts for specific task but also cemented the underlying that fixed term contract employees’ cannot benefit under the unfair termination remedies.

The only exception to this general rule so far, as held by the Court, is where there is reasonable expectation of renewal. When such expectation exists, aggrieved employees can refer disputes on unfair termination to the Commission. The exception is based on the Court’s interpretation of section 37 (a) (iii) of the Act, read together with rule 4 (4) of the Employment and Labour Relations (Code of Good Practice), G.N. No. 42 of 2007.

This key decision was adopted in subsequent decisions of the Labour Court notably in **Precision Air Service PLC vs David Jibo, Consolidated Revision No. 921 of 2019, Jordan University**

**College vs Mark Ambrose, Revision No. 37 of 2019** and **Malaika B Kamugisha vs Lake Cement, Revision No. 591 of 2019**, whereby the Labour Court denied employees under fixed term contracts, the remedies of re-engagement, reinstatement, and 12 months compensation, stating that the only remedy available for a dispute under fixed term contract was payment for compensation on the remaining period of the contract. That means such employees can only sue for breach of contract.

#### **What should fixed term contract employees do?**

The position now, as per the decisions of the Labour Court is that all the employees under fixed term contracts, *in the event of termination by the employer*, should sue under breach of contract, except in cases where there is a reasonable expectation of renewal.

Currently, CMA Form No.1 - a labor dispute referral form, introduced through The Employment and Labour Relations (General) Regulations Government Notice No. 47 of 2017, has placed an option for breach of contract to be filed by employees who are under fixed term contracts.

As at the date of publishing this updater; We have yet to come across any decision of the Court of Appeal of Tanzania confirming or varying this position of the law by the Labour Court.

#### **Takeaways:**

- i. As a general rule, in cases of termination of employment, fixed term contract employees can file disputes of breach of contract only, and
- ii. Equally, fixed term contract employees cannot benefit from unfair termination remedies.

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