Fixed-term employment contracts are not the easy way out

The Labour Relations Act provides for fixed-term employees to have a reasonable expectation of renewal of their contracts at the expiry date.

In the case of NUMSA obo Majoro and others vs Purple Moss 1309 t/a Kopano Thermal Insulation (2008, 4 BALR 342) the six employees of Purple Moss, the labour broker, were placed at a client on limited duration contracts. After a strike the client informed the labour broker that it no longer required the services of the six labour broker employees. The labour broker therefore gave its six employees notice invoking a clause in the employment contract effectively allowing the contract to terminate automatically when the client no longer required the services of the worker.

The arbitrator assigned by the Metal and Engineering Industry Bargaining Council (MEIBC) found as follows:

The MEIBC regulations require limited duration contracts to specify the end date of the contract. Section 29(1)(m) of the BCEA requires limited duration contracts to specify the end date of the contract. In fact I believe that the arbitrator has exaggerated here as this section merely requires that, where employment is for a “specified period” the contract must contain the date when the employment is to terminate. The section does not say that all limited period employment contracts must have end dates. That is, the BCEA does not prohibit employment contracts where the end of the contract is determined by an event instead of a specific date. Furthermore, section 198B(1)(a) of the LRA defines a fixed-term contract to include termination of employment on the occurrence of a specified event and not only on a fixed date.

Despite the above, the arbitrator went on to state that it is not right for employment contracts to contain agreements as to the end of the contract unless the end date is specified in the contract. She argues that

this reduces the employment security of the employee who, due to the uncertainty as to the end date of the employment, is unable to manage his/her financial affairs properly or to know whether to seek alternative employment or not.

The arbitrator deemed the limited duration clauses in the employees' contracts to be invalid. She deemed the employees to have been employed permanently and deemed the termination of their employment to be unfair!

In the case of Cape University of Technology vs Kabengele the employee was a lecturer in a permanent post but had been appointed on a series of 6 limited duration contracts because he was in South Africa on a refugee permit. He was then informed that his contract would not be renewed again.

The CCMA found that Mr Kabengele's alleged expectation of renewal was not reasonable and that his termination did not constitute a dismissal. After the Labour Court overturned the arbitration award the employer appealed to the Labour Appeal Court. The Court found that Kabengele's expectation of renewal had been reasonable because the university had renewed his contract unconditionally six times and the termination letter from the employer gave no reason for its failure to renew his contract. ***The Court ordered the employer to pay the employee 12 months' remuneration in compensation for the unfair dismissal.***

This decision shows how costly it can be for an employer not to understand the purpose of fixed term contracts and the dangers of failing to renew them. This makes it clear that employers need to train their management in the dangers of labour law.