

**IN THE EMPLOYMENT RELATIONS COURT AT SUVA**

**ORIGINAL JURISDICTION**

**CASE NUMBER:** ERCC 6 of 2020

**BETWEEN:** **SALOTE TUIFAGALELE**

**PLAINTIFF**

**AND:** **YATU LAU COMPANY LIMITED**

**DEFENDANT**

*Appearances:* Mr. P. Niubalavu for the Plaintiff.

Mr. J. Savou for the Defendant.

*Date/Place of Judgment:* Monday 11 August 2025 at Suva.

*Coram:* Hon. Madam Justice Anjala Wati.

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**JUDGMENT**

**A. Catchwords:**

*Employment Law – whether the employee was terminated in breach of the provisions of her contract and the employment law-whether the employment was unfairly terminated.*

**B. Legislation:**

1. *Employment Relations Act 2007 (“ERA”): ss. 24; 27; 28; 29; 30; 40; and 114.*

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***Cause***

1. This is an action for breach of employment contract. The plaintiff claims that the defendant has breached the contract of employment by unlawfully and unfairly terminating the same.
2. The plaintiff was employed under a contract of employment effective 1<sup>st</sup> August 2016 to 31<sup>st</sup> July 2019 as the Finance Manager and Board Secretary. The contract expired on 31 July 2019. The plaintiff

continued to be employed by the defendant on the same terms and conditions for a further period of 4 months until 26 November 2019.

3. On 10 December 2019, the plaintiff wrote to the defendant and enquired why she was not paid for that pay period. The defendant then emailed her on 12 December 2019 enclosing a letter dated 10 December 2019 informing her that since her contract had expired on 1<sup>st</sup> August 2019, she had been employed and paid till 26 November 2019 as the Board of Directors had decided that the position of Finance Manager was no longer required.

#### *Defendant's Position*

4. The defendant says that the plaintiff was employed under a fixed term of employment for 3 years. There was no provision for extension of the contract.
5. Upon the expiration of the fixed term of employment, she continued to work for a period of 4 months pending a decision of the Board as to whether she would be employed on a new fixed term contract.
6. The defendant says that the plaintiff was notified to take her outstanding leave from 16 October 2019. The Board subsequently met and resolved that no new fixed term contract will be entered into with the plaintiff. The plaintiff was then paid her outstanding wages and emoluments and notified that her employment has ended.
7. The contention by the defendant is that the plaintiff had to leave employment as her fixed term contract had expired. The defendant says that it had requested the plaintiff to come to the defendant's office and uplift her final wages and her certificate of service and to return the defendant's laptop and equipment which were in her possession but she failed to do so.
8. The defendant reiterates that the plaintiff's fixed term contract, when it ended, was not renewed and due to that the plaintiff is not entitled to any annual leave for the period of 27 November 2019 to 1 August 2022 as there was no employment contract to claim that.

#### *Agreed Issues*

9. The issues to be determined are:

- a. *whether the plaintiff was notified that she would be continued to be employed by the defendant for a further period of 4 months when a final decision is made on whether she would have a new employment contract?*
- b. *whether the plaintiff's employment for a further 4 months with effect from 1<sup>st</sup> August 2019 is deemed to be a continuity of employment for further 3 years?*
- c. *whether the defendant's actions are in breach of the ERA?*
- d. *whether the plaintiff's employment was unlawfully and unfairly terminated?*
- e. *whether the plaintiff is entitled to the reliefs sought in the Statement of Claim?*

### ***Law and Analysis***

10. The first part of the plaintiff's claim is that she was unlawfully terminated. The plaintiff's position is that when her contract expired on 31 July 2019, she continued to be in employment for 4 months. It is contended that the continued employment gave rise to presumption of a new contract for an indefinite period for the same terms and conditions as the expired contract of employment.
11. It is the plaintiff's position that her contract was unlawfully terminated as follows:
  - (a) *failure to terminate the contract without proper cause;*
  - (b) *failure to follow proper procedures in terminating the contract;*
  - (c) *failure to provide reasons for terminating the contract;*
  - (d) *acting in breach of ss.34 and 114 of the ERA by failing to pay wages owing to the plaintiff;*
  - (e) *acting in breach of s.30(6) by failing to provide certificate of service to the plaintiff;*
  - (f) *if the defendant is relying on redundancy, then by breaching ss.107 and 108 of the ERA.*
12. The defendant's position is that the plaintiff had a fixed term written contract for a period of 3 years which expired. Upon expiry, the plaintiff's employment continually orally for a further period of 4 months on a pay day to pay day basis.
13. The defendant says that at the end of the 4 months, the plaintiff was notified that her services were no longer required by the defendant and her employment ceased.

14. The defendant's position is that the plaintiff's employment contract terminated under s. 40 (1) (a) of the ERA and that there is no evidence to support the plaintiff's claim that the contract had been extended for a further term under the ERA or common law.
15. The defendant relies on s. 27(1) and (2) of the ERA, and asserts that the 4 months employment was from pay day to pay day basis which expired at the end of each pay day. It is contended that the plaintiff's employment ceased at the end of each calendar month from the date it was entered into pursuant to s. 27(2) (a) and (b) of the ERA.
16. Having reflected on the parties' position, I need to first decide whether the plaintiff's employment for 4 months post her expiry of the contract gives rise to a presumption of new contract.
17. The defendant's position is that since the contract had expired on 31 July 2019, it got terminated by s. 40 (1) (a) of the ERA. Any work after that was based on an oral contract for a period by reference to which wages are payable and expired on the end of each pay day.
18. S.27 of the ERA reads:

**"Presumption as to period of contract and termination of contract**

[1] *In the absence of proof to the contrary and subject to subsection (2), a contract is deemed to be a contract for the period by reference to which wages are payable under the contract except that-*

- (a) *the period must not be extended for more than one month; and*
- (b) *the period in the case of a contract for the payment of wages at intervals of less than a day is deemed to be a daily contract.*

[2] *If a contract which would, under subsection (1), be deemed to be a monthly contract, is entered into after the first day of any calendar month, the following provisions subject to any proof to the contrary, have effect-*

- (a) *the contract is, until the expiry of the calendar month during which it was entered into, deemed to be a contract for the period commencing on the day on which it was entered into and terminating on the last day of the calendar month during which it was entered into; and*
- (b) *if, after the termination of the contract under paragraph (a), a new contract is deemed or presumed to have been entered into under section 28 the period of the new contract is presumed or deemed, as the case may be, to be the full calendar month next ensuing after the termination."*

19. S.28 of the ERA reads:

*“Presumption as to new contract*

- [1] *Subject to subsection (2), each party to a contract is conclusively presumed to have entered into a contract for an indefinite duration;*
- [2] *Subsection (1) does not apply-*
- (a) to a contract for one fixed period which is expressed to be not renewable;*
  - (b) to a contract for a fixed task; or*
  - (c) to a daily contract where the wages are paid daily.*
- [3] *If notice has been given in accordance with section 29 to terminate a contract for an indefinite period but the employer permits the worker to remain or the worker, without the express dissent of the employer, continues in employment, then unless the contrary is shown, the notice is deemed to be withdrawn with the consent of both parties.*
- [4] *For the purpose of subsection (3), the parties are, subject to section 29, deemed to have entered into a new contract for the same period and upon the same terms and conditions as those of the contract previously concluded, and the worker is deemed to have maintained continuity of employment for the purpose of any rights either pursuant to this Act, any other written law or pursuant to a collective agreement which may be applicable.”*

20. S. 27 will not apply to the plaintiff in this case because the plaintiff was previously employed by the defendant on a written contract for 3 years. That contract had come to an end on 31 July 2019. After that, the plaintiff continued to be in employment for 4 months. The continuity of employment gives rise to a presumption of a new contract for an indefinite period pursuant under s. 28(1) of the ERA. The plaintiff's situation is specifically covered by s. 28(1).

21. May I say at this stage that the contract between the parties was not a contract for a fixed period. A fixed term contract should be expressed to be not renewable: *s.28 (2) (a) of the ERA*. The subject contract does not state that it was non-renewable. If it was a fixed term contract expressed to be non-renewable then s. 28 (1) presumption of new contract will not apply. The defendant could then argue that the term of the contract would be the same as that stipulated in s. 27.

22. I must also state that there is no evidence from the defendant that when the plaintiff's contract came to an end, she was informed that she will work for 4 months and the Board will decide whether a new contract will be issued. The defendants' witness clearly stated after the plaintiff had worked for 4 months, then the Board decided to terminate her contract.

23. I repeat that since the plaintiff continued in employment after its expiration, it is presumed that the parties have entered into a new contract for an indefinite period. Therefore, the defendant ought to have followed either the provisions of the law or the provisions of the contract to terminate the same.
24. S. 29 of the ERA states that a contract for an indefinite period may, in the absence of a specific agreement between the parties to the contrary, be terminated by either party under the provisions of subsection 1 (a), (b), (c), or (d) of the ERA.
25. I find that since the parties had an earlier agreement between them, the terms and conditions of the previous contract will apply. In that case, the provisions on termination of the contract will apply as they had previously agreed to those terms. The plaintiff expects no lesser benefit than what she had contracted with the defendant.
26. Let me identify the termination clause in the previous contract of employment of the parties.

**“Termination and Summary Dismissal**

**Termination**

*10.1 ... , either party shall give one months’ notice of termination of employment, or in lieu thereof, one month’s salary or wages shall be paid or forfeited by the party not giving the requisite notice.”*

27. Before I deal with the issue of the notice period, I must say that clause 10.1 makes provision for termination without cause. It allows for either party to terminate the contract without a cause as long as proper notice or payment in lieu of notice is given. To that end, I do not accept the plaintiff’s contention that the contract could not have been terminated without a cause.
28. Under clause 10.1 of the contract of employment, the defendant ought to have given the plaintiff 1 months’ notice to terminate the contract.
29. Was the plaintiff given 1 months’ notice to terminate the employment or payment in lieu? The evidence shows that a letter of 10 December 2019 was emailed to the plaintiff on 12 December 2019.
30. The letter of 10 December 2019 reads:

**“Re: Expiry of Your Contract – Finance Manager**

*Dear Mrs Salote Tuifagalele,*

*I wish to advise you that your contract had expired on the 1<sup>st</sup> of August 2019.*

*However, you were employed and paid till the 26<sup>th</sup> of November 2019.  
This includes all entitlements due to you.*

*The Board of Directors have decided that the position of the Finance Manager is no longer required.*

*Your Employment with Yatu Lau Company Limited ceased on the 27<sup>th</sup> November 2019.*

*As required you are to return all company assets within your possession, please find list attached.*

*We acknowledge your work for the past 7 years and wish you well in your future endeavours.*

*Thank you for your services.*

*Yours Sincerely,*

*Signed*

*Mrs. Jiu Daunivalu*

*Chair, HR Subcommittee*

*Signed*

*Dr. Esther Williams*

*Chair, FAISC Subcommittee"*

31. This letter is not a notice to terminate the contract. A notice to terminate ought to have been given before the employment comes to an end. This letter is dated post the plaintiff's contract being terminated. It is a letter which is given to indicate that the plaintiff's employment had ceased on 27 November 2019. If the employment of the plaintiff was intended to be ceased, then a notice of termination ought to have been given on 27 October 2019 or payment of wages in lieu of notice made on 27 October 2019.
32. The employer has clearly breached the terms of the contract by not giving 1 months' notice to terminate the contract or payment in lieu of notice.
33. Mr. Savou says in his closing submissions that the plaintiff's employment was conclusively terminated by the letter of 10 December 2019. He says that she had been on leave from 16 October 2019, so the one month pay was in lieu of notice. I find this submission as dishonest. When the plaintiff was sent on leave, she was still employed by the defendant and not given any notice that her contract will be brought to an end after her leave expires. She was still in employment and as such any leave given to her cannot be treated as notice period.

34. There is no evidence to establish that when she went on leave she was given notice in writing that her employment will terminate or that she was given one month pay on 16 October 2019 to be treated as payment in lieu of notice.
35. The failure to give 1 months' notice to terminate the contract or 1 month's payment in lieu of notice to terminate the contract is in breach of the provisions of the contract. The employer has breached the contract of employment.
36. The employer has also breached s. 114 of the ERA by not informing the plaintiff on the date of termination of the contract of the reasons why her contract has come to end.
37. I now turn to the issue of all unpaid wages and benefits under the contract, the time in which it ought to have been paid, and the requirement mandated by the law for the employer to provide certificate of service to the worker. S.30 of the ERA reads:

**“Further provisions as to termination of contracts**

- [1] *Upon the termination of a contract of service, the employer must pay to the worker all wages and benefits then due to the worker by end of the following working day.*
- [2] *The wages and benefits due to a worker under subsection (1) must, in the case of a worker who is entitled to receive notice from the employer in accordance with this Act or the worker's contract (the terms of which relating to notice are not less beneficial than this Act), include wages and benefits payable in respect of services rendered during the period of notice or payable in lieu of the notice.*
- [3] *If payment is made in lieu of notice the payment must include the wages and benefits that would have been payable to the worker if the worker had worked during the period.*
- [4] *Nothing in this Act precludes either party from summarily terminating a contract of service for lawful cause.*
- [5] *The termination of a contract of service under this Act must be without prejudice to any accrued rights or liabilities of either party under the contract or section 28.*
- [6] *Upon termination of a worker's contract or dismissal of a worker, the employer must provide a certificate to the worker stating the nature of employment and the period of service.”*

38. The letter of the defendant advising the plaintiff that her contract has come to an end was emailed to the plaintiff on 12 December 2019. Properly, the defendant could only inform the plaintiff on 12 December 2019 that her contract would terminate on 11 January 2020. If that notice was not given then

the plaintiff could be told on 12 December 2019 that her contract will end on that day and that she will be paid 1 month's salary and wages in lieu of notice on the following day.

39. The plaintiff was not paid her salary for a month and 1 month's wages in lieu of notice on 13 December 2019. There was therefore breach of s. 30 (1) of the ERA. The plaintiff was also entitled to all wages up till 12 December 2019 and this was to be paid to her on 13 December 2019. This was not done. The plaintiff has therefore breached the provisions of the law in not paying the monies on time.
40. S. 30(6) also requires that a certificate of service be given to the worker. A certificate of service is evidence of a worker's employment and experience in a particular field. It is very helpful when a worker seeks new job and pledges experience. In this instance, the employer failed to give a certificate of service. Once again there was breach of s. 30 (6) of the ERA.
41. I therefore find that the employer had breached both the terms of the contract and the ERA in terminating the plaintiff's contract of employment. I will assess the proper remedies in a while. Before that let me turn to the plaintiff's claim that she was unfairly terminated.
42. The plaintiff's evidence was that in September 2019, she took leave and took her mother to India for thyroid cancer treatment. Her father was also sick at the time and she had to accompany her mother. She was still in India when she received a call that the Board of Directors had convened a meeting and that her salary will be decreased from \$50,000 to \$35,000. When she arrived in Fiji, she was told that her role will change from Finance Manager to site Property Manager. She was told to take an additional day off and stay home.
43. Even before being terminated, the plaintiff was told not to enter the office or discuss any financial matters or talk to the Directors.
44. I find that the employer had acted unfairly towards the employee. There was lack of empathy and regard for her as an employee when they proposed terms to her which was less advantageous to her when she was on leave. These matters could have waited when she came back to office. She was entitled to a proper discussion and explanation of the employer's position which did not take place. When she did not agree to terms lesser than what she was enjoying, she was terminated.
45. I do not endorse the employer's action in prohibiting her from entering the office when she was still in employment. They also stopped paying her wages without any information to her. The evidence is clear

that she did not even know why she was not paid. When she enquired why she was not paid then she was told that she was no longer employed. This of course caused her agony and humiliation. She was not being treated fairly.

46. Every employer has a duty to provide work to the employee unless one of the conditions stipulated in s. 24 of the ERA has been met. In this case, none of the conditions was met and as such the employer could not have stopped the wages of the worker. She was still working and to stop paying her is an insult to her causing her anguish and humiliation.
47. The employer's conduct was unfair as outlined and as such I find that in carrying out the termination, the employer has caused the employee insult and injury to her feelings. She ought to be compensated for that.
48. Let me now ascertain the damages for unlawful dismissal. The plaintiff was able to secure an employment after 1 year 4 months at a salary lower than she was employed. There is clear evidence that she started looking for work with various institutions immediately after she was notified that she is no longer employed. She was in a higher position and it was not easy for her to find suitable work for herself. When she got an opportunity, she started working although at a lower salary. She has therefore mitigated her loss.
49. Let me specify the damages that she ought to get. I find that the worker is entitled to 1 year's salary as damages for unlawful dismissal. Although the worker has lost wages for 1 year 4 months, I find that payment of 1 year's wages is adequate in this case. In 1 year, a worker is expected to look for work for survival given that the contract permitted termination without cause which the worker agreed to. 1 year's wages includes damages for breach of contract and the ERA.
50. If the worker was informed early that her contract will come to an end, she would have started looking for work whilst in the employment of the defendant. She too needs to earn a living. She only found work after a year and I find that it is due to lack of transparency from the employer that she could not start looking for work.
51. In addition to 12 month's salary, the worker is entitled to 10 percent of lost FMPF contributions from the employer.
52. I also award the plaintiff \$10,000 for unfair dismissal. This is to be paid by the employer for the unfair treatment by the employer.

53. As per the agreed fact and the contract of employment tendered in evidence, the plaintiff was paid \$45,800 per annum. 10 percent of that would amount to \$4,580. The total sum awarded to the plaintiff is \$50,380. I will add 3 per cent pre-judgment interest on that from the date of termination until the date of hearing of the matter which is 27 November 2019 to 20 April 2022, a period of 2 years 5 months. The interest calculates to \$3,652.55:

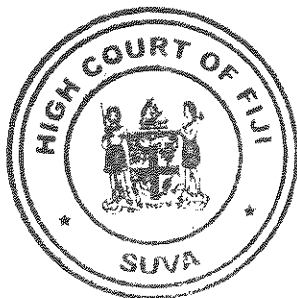
- $3/100 \times 50,380 = \$1,511.40$  (1 years interest)  $\times 2 = 3,022.80$
- $1511.40/12 = 125.95 \times 5 = 629.75$

54. The total award of damages that ought to be paid to the plaintiff is  $\$54,032.55 + 10,000 = \underline{\$64,032.55}$ .

### *Final Orders*

55. In the final analysis, I find that the plaintiff was unlawfully and unfairly terminated from her work and for that the employer is to pay her damages equating to \$64,032.55 within a month.

56. I also order the defendant to pay to the plaintiff costs of the proceedings in the sum of \$5,500 within 1 month.



*Anjala Wati*

.....  
*Hon. Madam Justice Anjala Wati*

Judge

11.08.2025

To:

1. *Oceanica IP, for the Plaintiff.*
2. *Mr. Jiaoji Savou, Barrister and Solicitor, for the Defendant.*
3. *File: Suva ERCC 6 of 2020.*

