

**IN THE EMPLOYMENT RELATIONS COURT**  
**HIGH COURT OF FIJI**  
**AT LAUTOKA**

CASE ACTION NO. ERCA 01 OF 2023

**BETWEEN:**            **EPELI CAMA**

**APPELLANT**

**A N D:**            **WATER AUTHORITY OF FIJI**

**RESPONDENT**

Appearances:        Ms. Vatege M. for the Appellant  
                             Ms. Matakaca A. for the Respondent

Date of Hearing:     05 June 2024

Date of Ruling:     08 July 2025

# **R U L I N G**

## **INTRODUCTION**

1.        The appellant is one Mr. Epeli Cama. He was employed as a laborer by the Water Authority of Fiji (“**WAF**”) from 05 June 2015 to 30 April 2019. Cama was engaged on a series of short fixed-term contracts. These contracts all had a clause which stipulated the commencement date as well as a date of termination.
2.        Cama was a member of the National Union of Workers (“**NUW**”). However, the NUW was not consulted, let alone involved in any way, in the lead-up to any of his fixed short-term contracts.
3.        Meanwhile, at all times when WAF and Cama entered into each contract, a Collective Agreement had been operational between the NUW and the WAF. Clause 1 (a) of the Collective Agreement recognizes the NUW as:

“...the representative of, and the agent for the purposes of Collective Bargaining in all matters pertaining to rates of pay/salary, hours of work, discipline and all other terms and conditions of employment ...including OHS matters of the Authority. The union shall observe all the provisions of this Agreement and shall

4. Below, I tabulate the contracts in chronological order:

| <b>Contract</b> | <b>Duration (Start &amp; End Date)</b> | <b>Position</b>           | <b>Comments</b>                                                                                                                                                                                                                                                                                                                                |
|-----------------|----------------------------------------|---------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 27/05/15        | 01/06/15<br>18/12/15                   | Labourer                  | <u>Termination Date</u> - <b>18 December 2015</b> (Clause 11.1).<br><br>Clause 11.1.1 specifies that “there will be no expectation that your contract will be renewed or prolonged beyond the date of completion... The termination of this contract...shall not be construed as being a retrenchment but shall be completion of the contract” |
| 19/01/16        | 18/01/16<br>16/12/16                   | Labourer                  | <u>Termination Date</u> – <b>16 December 2016</b> (Clause 11.1).<br><br>Clause 11.2 repeats Clause 11.1.1 of 2015 contract.                                                                                                                                                                                                                    |
| 28/08/17        | (missing relevant page)                | (missing relevant page)   | <u>Termination Date</u> – <b>31 July 2018</b> (Clause 12.1).<br><br>Clause 12.2 repeats Clause 11.1.1 of 2015 contract.                                                                                                                                                                                                                        |
| 28/09/18        | 01/10/18<br>01/04/19                   | Temporary Worker (Labour) | <u>End Date</u> – <b>01 April 2019</b> (Clause 1.1).<br><br>Clause 1.2 – Employee acknowledges and agrees that the ...appointment under this contract is not renewable. A subsequent contract of employment shall only be offered based on performance, overall merit and availability of a vacant position...                                 |

5. At some point in mid-March 2019, WAF extended Cama’s contract to 30 April 2019.
6. It is to be noted that at the end of the term of the last contract, WAF determined that it would not offer Cama a further contract. And so, on 30 April 2019, Cama’s employment with **WAF** ended. A month later, on 30 May 2019, the NUW filed a *Dispute of Rights* with the Mediation Unit for compulsory mediation as required under the Employment Relations Act 2007.
7. Following an unsuccessful mediation, the grievance was then referred to the Employment Relations Tribunal (“**ERT**”) for adjudication under section 110 of the Employment Relations Act 2007. That referral was made on 19 August 2019.

8. In its ruling delivered on 11 August 2022, the ERT dismissed the NUW's claim for wrongful and unfair dismissal. It is that ruling which is the subject of the appeal before me now.

## **PROCEDURAL HISTORY**

9. The matter was first placed before me on 27 April 2023. It was then adjourned for mention to 30 April 2023. Thereafter, the matter was adjourned to 17 August 2023, 19 September 2023, 19 October 2023, 30 November 2023, 30 January 2024, 20 February 2024 and finally to 15 April 2024. The adjournments were due to the fact that it took the ERT Registry several months to prepare the Copy Records.
10. The copy Records were eventually filed in February 2024. Even so, on 20 February 2024, Mr. Mark Anthony appeared for the appellant and advised the court that the Copy Records obtained from the ERT Registry had some missing pages. At some point between March and April 2024, a *Supplementary Records of the Employment Tribunal* was filed. On 15 April 2024, counsel appeared to confirm that the records were in order. I then set directions for the filing of submissions and then adjourned the matter to **04 June 2024** for hearing.
11. R. Patel Lawyers filed their written submissions for and on behalf of WAF on 03 May 2024. They appeared on 04 June 2024, ready for the hearing. However, the NUW was not in a position to proceed. I was told in Court that the officer in carriage of the appeal was away in Geneva for a conference. I also noted that the NUW had not filed its submissions. I then gave twenty-eight (28) days to the appellant to file and serve written submissions and adjourned the matter for ruling. I also granted costs in the sum of \$1,000 – 00 (one thousand dollars) in favour of the respondent.
12. The NUW finally filed its submissions on 25 June 2024.
13. Regrettably, **the impugned ERT decision is not in the Records of the Employment Tribunal**, nor is it in the *Supplementary Records of the Employment Tribunal*. This, I have only just discovered now while reviewing the Copy Records in the course of writing this Ruling. Notably, the respondents have also made a note in their submissions of the missing ERT decision.
14. There are, altogether, nine (9) grounds of appeal raised by NUW. Grounds 1, 2, 3, 4, 5 and 6 all appear to be based on the basic underlying question as to whether or not Cama was employed at WAF as a *temporary worker* or as a *permanent worker*.
15. Ground 8 appears to raise the fundamental question as to how the Collective Agreement which was in place between the NUW and the WAF applies in the circumstances of this case.

## APPELLANT'S POSITION

16. NUW's main complaint appears to be based on what it perceives to be WAF's action in issuing short-term employment contracts with NUW members. These short-term employment contracts are negotiated, and agreed on individual terms with individual NUW members - while a collective agreement is in force between WAF and NUW.
17. According to the NUW, this practice of "issuing short-term employment contracts":
- (a). is discriminatory, places the workers concerned at a disadvantage – undermines the NUW's bargaining authority and is contrary to fair labour practices.
  - (b). breaches clauses 1 (a) and (c), 2(b) and 3 (a) and Clause 30.1 and 30.2 of the Collective Agreement signed on 06 September 2018. This position is premised on the assertion that:
    - (i). the Collective Agreement is the contract of employment between the WAF and the NUW members.
    - (ii). section 37 of the Employment Relations Act 2007 supports (i) above.
  - (c). breaches the Employment Relations (Amendment) Act 2015.
  - (d). breaches the duty of **good faith** under section 149 of the Employment Relations Act 2007.
  - (e). breaches sections 19 and 20 of the 2013 Constitution of Fiji.
18. The NUW argues<sup>1</sup> that Cama's contract of employment is comprised entirely in the Collective Agreement. Section 37 (1) of the Employment Relations Act recognizes the Collective Agreement as constituting the written contract of employment between an employer and his/its employees. Furthermore, section 28 provides that:
- "...each party to a contract is conclusively presumed to have entered into a contract for an indefinite duration".*
19. The Collective Agreement makes no mention about individual short-term contracts being an option between WAF and an NUW member. Therefore, the series of short-term individual employment contracts which Cama purportedly had with the WAF did not govern their employment relationship.
20. The Fiji Court of Appeal in **New India Assurance Company Ltd v PS for Labour Industrial Relations, Tourism & Environment** [2010] FJCA held that:
- "It is an accepted practice if not a principle, in employment relations, that once a collective agreement is in place, an employer cannot offer different terms and conditions of employment to individual union members"*

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<sup>1</sup> as per NUW's submissions filed before the ERT on 22 October 2020.

21. This means that Cama was actually employed continuously at WAF without break from 2015 to 2019. He was thus engaged for “**an indefinite duration**” as per section 28 (1) of the Employment Relations Act and/or as per clause 30 of the Collective Agreement. In that regard, Cama was a “**permanent worker**” in terms of the definition of the term in the Collective Agreement as well as under the Employment Relations Act.
22. A permanent worker is one who has completed a term of twelve (12) months or more<sup>2</sup>. In contrast, a temporary worker is one who works under the 12-month time frame – specifically for six (6) months<sup>3</sup>.
23. A permanent employee engaged for “an indefinite duration” can only be dismissed with cause. There was no cause for Cama’s dismissal in this case.
24. The Collective Agreement recognizes the NUW as the representative and the agent of its members for the purposes of collective bargaining. The series of fixed short-term individual employment contracts in question here, were all initiated by WAF without consulting the NUW, outside the provisions of the Collective Agreement. In doing so, the WAF acted in breach of its *duty of good faith* towards collective bargaining.
25. The duty of good faith requires the WAF to, *inter alia*, consult the NUW before negotiating or concluding the individual contract of employment of an NUW member.

#### **WAF’s POSITION**

26. The WAF’s position<sup>4</sup> is that Cama was employed on a series of short-term contracts from 2015 to 2019 as a labourer. These provide the terms of his contract. The Collective Agreement does not entirely constitute Cama’s employment contract. Only the relevant terms in the Collective Agreement can be implied in Cama’s employment contract (**Transport Workers Union v Air Fiji Limited** No. 31 of 2007; **DPP v Gyanendra Naveen Prakash Singh & Ors** (1977) 23 F.L.T 135).
27. While the short-term contracts varied slightly in duration, they were all for a term of less than twelve months.
28. The Collective Agreement in fact defines a **permanent worker** as one:

*“who has been contractually engaged...for a term of 12 months or over”*

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<sup>2</sup> as per the Classification of Workers in clause 3 of the Collective Agreement dated 06 September 2018.

<sup>3</sup> *ibid.*

<sup>4</sup> as per submissions filed by R. Patel Lawyers on 22 October 2020 for and on behalf of the WAF.

And a **temporary worker** as one:

*“who has been contractually engaged specifically for projects deployed by the Employer and for which the Worker’s employment shall be at least 6 months but less than 12 months”*

29. Cama was engaged as a temporary worker on a needs basis. Contrary to what the NUW submits, section 28 of the Employment Relations Act 2007 is not to be read as stipulating that every contract of employment is presumed to be for an indefinite duration.
30. WAF, as employer, has the prerogative to set a fixed term of either 12 months or longer, or, less than 12 months – as well as other conditions of any contract of employment.
31. At the end of Cama’s last contract, the WAF determined not to offer any further contract to him. Accordingly, this was not a case of “dismissal” in terms of the Employment Relations Act. Rather, this was a case of termination of a fixed -term contract simply through the effluxion of time.
32. WAF is a **statutory body** providing an **essential service**. Section 16 of the Water Authority Act gives WAF broad powers to appoint staff and set policies and procedures relating to employment terms and conditions.
33. It is wrong to say that Cama was engaged for an indefinite period. All his contracts had a commencement date and a date of termination. It is the prerogative of WAF to insist on a commencement date and a date of termination. At the expiry of an employment contract, it is entirely up to WAF as to whether or not it wants to continue employing an employee.
34. The Collective Agreement does not say that employment contracts are for an indefinite period. The Collective Agreement itself is for a fixed period of three (3) years as per section 19 V (5) of the Employment Relations Amendment Act No. 4 of 2015.

### **GENERAL COMMENTS**

35. Generally, when an employment contract for a specified time reaches the nominated end date, the contract terminates through effluxion of time. In other words, the contract has simply run its course and the employment relationship thus terminates on the specified and agreed end-date (see **Victoria v The Commonwealth** [1996] HCA 56, (1996) 187 CLR 416).
36. Accordingly, where an employee has been employed repeatedly in a series of fixed-term employment contracts, each fixed – term contract is said to commence and end on its specified commencement and end date. In that regard, the law will regard each period of employment under each fixed term contract as separate from the other (s).
37. However, there is ample case law authority that, sometimes, a worker engaged on multiple consecutive fixed-term contracts will be deemed as having been employed “*continuously*”. This will happen for example where the same employee is rehired repeatedly for the same or similar task, with little or no breaks in between the contracts, and where the employer controls

the continuity of work, and, where the employer intended to maintain the employment relationship. Hence, despite what the contract (s) of employment say, an employee on a series of short-term contracts may qualify as a “*continuous*” or a “*permanent*” employee depending on the substance of the employment relationship.

38. The law in some jurisdictions recognize that, in some circumstances, successive contracts are used as a ploy by employers to avoid obligations and benefits to the employee which are tied to *permanent employment*. One such benefit as the protection against unfair dismissal.

### ISSUES

39. The main questions in this case are:
- (i) whether Cama had entered into a series of short-term contracts, each with a specific nominated end date?
  - (ii) if so, whether his employment with the WAF had terminated with the effluxion of the nominated end date of the last contract?
  - (iii) is it tenable in the circumstances of this case that, although Cama was purportedly engaged under a series of fixed-term contracts, he was in fact a continuing employee?
  - (iv) if so, was Cama’s employment terminated by WAF when WAF decided not to offer Cama a further contract?
  - (v) if the answer to (iv) above is “yes”, was the termination of his employment unfair or unlawful?
40. Underlying all the above, is the issue as to what extent is the Collective Agreement between the NUW and the WAF determinative in providing the answers to the above.

### CONCLUSION

41. Without the impugned decision before me, it is not clear to this Court as to the reasoning which the ERT applied in reaching its decision. If I were to make a decision at this time, even on the submissions made, it would be akin to my having to exercise a first-instance jurisdiction over the questions raised. I refuse to do so for obvious reasons.
42. I refuse to make a decision on the appeal on account of the fact that the impugned decision has not been placed properly before this court.
43. The parties are to bear their own costs.



  
Anare Tuilevuka  
JUDGE

08 July 2025