

**IN THE EMPLOYMENT RELATIONS COURT**

**AT SUVA**

**ORIGINAL JURISDICTION**

**CASE NUMBER:** ERCC 17 OF 2016

**BETWEEN:** **TEVITA KUNATUBA**

**PLAINTIFF**

**AND:** **PERMANENT SECRETARY FOR EMPLOYMENT,  
PRODUCTIVITY AND INDUSTRIAL RELATIONS**

**1<sup>st</sup> DEFENDANT**

**AND:** **MINISTER FOR EMPLOYMENT, PRODUCTIVITY &  
INDUSTRIAL RELATIONS**

**2<sup>nd</sup> DEFENDANT**

**AND:** **ATTORNEY GENERAL OF FIJI**

**3<sup>rd</sup> DEFENDANT**

**Appearances:** *Ms. S. Kunatuba for the Applicant.*

*Mr. A. Prakash and Mr. S. Kapoor for the Defendants.*

**Date/Place of Judgment:** *Friday 28 July 2023 at Suva.*

**Coram:** *Hon. Madam Justice Anjala Wati.*

---

**A. Catchwords:**

*Employment Law – Whether the claim against the respondent being an essential service and industry brought within the time limit prescribed by the legislation – claim time barred – there being no provision for any extension of time, the claim cannot continue – claim struck out – there is thus no need to determine the substantive claim for unlawful and unfair dismissal.*

**B. Legislation:**

- 1. The Employment Relations Act 2007 (“ERA”): ss. 185; and 188.*
-

*Cause/Background*

1. On 16 December 2016, the Applicant filed a claim against its former employer, the Ministry for Employment, Productivity and Industrial Relations claiming damages for unlawful and unfair termination of his employment.
2. Mr. Kunatuba was employed as a Mediator by the Ministry of Employment, Productivity & Industrial Relations ("**Ministry**").
3. On 22 September 2016, the Ministry issued a Notice to the employee informing him that his contract would come to end on 22 November 2016. The reason for the termination was outlined in the notice.
4. The notice reads:

*"Subject - Notice - Termination of Contract*

1. *As you are aware, the Mediator post is now a line position as per the 2016/2017 budgetary approval and as such this position was advertised on Saturday 3 September 2016 in the newspaper as per the requirements of the Open Merit Recruitment and Selection Criteria.*
2. *This correspondence serves as an official formal notification of termination of your contract in accordance with clause 9 (a) of your employment contract.*
3. *You are hereby given 2 months' notice effective from today of the termination of your contract. Therefore, your last day of employment will be Tuesday 22 November 2016 where you will be required to handover all official assets belonging to the Ministry unless you are successful in your application to the abovementioned post.*
4. *I appreciate the commitment and loyalty you have rendered to the Ministry and Government as a whole. We wish you all the best in your future endeavours.*

5. *The Acting Manager Corporate Service will liaise with you regarding your unutilized leave and all other human resources matters”.*

5. The matter was heard in open Court. Through its submissions, the defendants’ have now raised that the action filed by the plaintiff is time barred under s. 188(4) of the ERA and that it ought to be struck out.
6. Although preliminary points of law such as time barred claims should be raised before the trial to avoid further costs to the parties, I am still obliged to determine the issue as there is no cut off period when the point of law such as this can be raised. The issue such as this has the potential to determine the entire claim if answered affirmatively.

***Issues/ Law and Determination***

7. The issue therefore before the court is whether the claim by the plaintiff is filed out of time and as such cannot proceed. If it is not time barred then whether the plaintiff was lawfully and fairly terminated from work.
8. Part 19 Division 2 is a provision that covers employment grievances against essential services and industries. The defendant undoubtedly is an essential service and industry as s. 185 of the ERA includes the government as an essential service and industry. The applicant was employed and paid for by the Government of Fiji.
9. To decide whether the claim has been brought within the time limit prescribed by the law, I have to cast my mind to s. 188(4) of the ERA which reads:

*“Any employment grievance between a worker and an employee in essential services and industries ... shall be dealt with in accordance with Parts 13 and 20, provided however that any such employment grievance must be lodged or filed within 21 days from the date when the employment grievance first arose, and-...”*

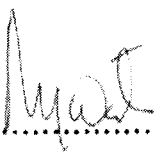
***Underlining is Mine***

10. The applicant employee is challenging the decision of the employer of 22 September 2016. This is very clear from his claim. This is the day on which the notice for termination of the employment was issued. It is therefore clear that the grievance first arose on 22 September 2016. The time period of 21 days runs from this day. It is therefore plain and clear that the plaintiff did not file his claim within the requisite 21 days and as such his claim is time barred.
11. Under the specific provision covering employment grievances against essential services and industries, there is no provision for extension of time to bring a claim and as such I find that the general provisions for extension of time under any other provisions of the law in the ERA or any other written law does not assist the applicant.

***Final Orders***

12. I find that the claim is not filed within the time limitation prescribed by s. 188(4) of the ERA and as such it cannot proceed to continuation. The claim shall, and I so order it to be struck out.
13. I order each party to bear their own costs of the proceeding.



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

**Judge**

**28. 07.2023**

**To:**

1. *Law Solutions for the Applicant.*
2. *Attorney – General’s Chambers for the Respondent.*
3. *File: ERCC 17 of 2016.*