Yong Pui Yee v Mahkamah Perusahaan Malaysia & Anor and another case [2023] MLJU 1688

Malayan Law Journal Unreported

HIGH COURT (KUALA LUMPUR)

AMARJEET SINGH SERJIT SINGH J

SEMAKAN KEHAKIMAN NO WA-25-143-04/2021 AND WA-25-146-04/2021

27 July 2023

Edward Saw Keat Leong (with Megan Choo Wen Shin and Lew Kang Ying) (Josephine, LK Chow and Co) for the applicant.
Yong Hon Cheong (Zaid Ibrahim & Co) in Semakan Kehakiman No WA-25-143-04/2021 for the respondent.
Wong Keat Ching (with Teoh Alvare) (Zul Rafique & Partners) in Semakan Kehakiman No WA-25-146-04/2021 for the respondent.

Amarjeet Singh Serjit Singh J:

JUDGMENTIntroduction

[1]This judgment concerns two applications for judicial review that emanated from two separate awards of the Industrial Court i.e Award No. 4 of 2021 and Award No. 5 of 2021 handed down on 4th January 2021, The Industrial Court had dismissed the claims of dismissal without just cause and excuse in both proceedings in which the awards were made.

[2]The judicial review applications were commenced by Yong Pui Yee, the applicant (at times referred to as trainee in certain documents) in both the failed proceedings before the Industrial Court. The applications are:

(i) Application for Judicial Review No. WA—25—143— 04/2021 against Award No. 5 of 2021 wherein CIMB Investment Bank Berhad (“CIMB” or the “Company”) is the respondent; and

(ii) Application for Judicial Review No. WA-25—146— 04/2021 against Award No. 4 of 2021 wherein PricewaterhouseCoopers (“PwC” or “the Firm”) is the respondent.

[3]In this judgment, the two applications are collectively referred to as “the applications” unless separately referred to. The applicant claimed against both CIMB and PwC for dismissal without just cause and excuse under section 20 of the *Industrial Relations Act 1967* (“the Act”) at the Industrial Court. As strange as it sounds, the applicant had made claims of unjust dismissal against two different employers. The applicant has her reasons for taking this course of action and this will be revealed below. The claims were heard together at the Industrial Court thus the applications being heard together before me at the request of the parties.

[4]In the judicial review applications, the reliefs sought were the same and are as follows;

(i) an order of *certiorari* to quash the awards ie Award No. 4 of 2022 and Award No. 5 of 2022 respectively; and

(ii) in the event the awards are quashed, an order of *mandamus* for the awards to be remitted back to the Industrial Court for a rehearing before another division of the Industrial Court.

[5]On 13th March 2023, I dismissed both applications, This judgment contains the full reasons for my decision.
The salient facts

[6]CIMB and PwC came up with a programme known as the 'CIMB Fusion Programme with PricewaterhouseCoopers' (for convenience referred to as "the Programme" unless stated otherwise). The Programme allows a graduate to gain experience with two employers of different sectors under a training scheme. During the duration of the Programme the trainee would be employed first by PwC as an associate for a period of 21 months ("1st milestone"), followed with CIMB as an assistant manager for 18 months ("2nd milestone") and finally with PwC as an associate for 12 months ("3rd milestone") — a total of 4 years. At the end of the 4 years, the trainee may be offered employment at PwC or CIMB.

[7]PwC on 4th April 2012, by way of a letter of offer, offered the applicant a fixed term of employment as an associate commencing 18th September 2012 until 30th June 2014 under the Programme ("the PwC letter of offer"). Attached to this letter, were the memorandum of terms and conditions of employment as well as the Programme document. The applicant was told that if she accepted the offer she was to sign and initial a second copy of the PwC letter of offer and return the same to PwC,s human resource department by the stipulated date due, failing which, the offer would lapse. The applicant accepted the offer.

[8]On 16th April 2012, by way of a letter, CIMB made to the applicant an offer for a fixed term of employment as an assistant manager for the 3rd year of the Programme, that is to say commencing 1st July 2014 ("the CIMB's letter of offer"). The employment according to the letter of offer is subject to the 'main terms and conditions of the employment' enclosed thereto and the ACA Tripartite Training Contract ("Tripartite Training Contract"), The applicant was told that if she accepted the offer she was to sign and initial a second copy of the CIMB letter of offer and return the same to CIMB by the stipulated date due, failing which, the offer would lapse. The applicant accepted the CIMB offer.

[9]The 1st milestone was completed on 30th June 2014. The applicant then started the 2nd milestone on 1st July 2014.

[10]Towards the end of the 2nd milestone, on 26th June 2015 the applicant said that she was contacted by PwC,s human resource department informing her that she was not required to report to PwC on 1st July 2015 for the 3rd milestone until further notice and this was confirmed by an email on 30th June 2015. On 23rd July 2015, a meeting was held between CIMB and the applicant. On 10th August 2015, the applicant was informed officially that she was removed from the Programme. The applicant claimed that her removal was purportedly the result of a joint decision by CIMB and PwC and that the joint decision amounted to dismissal without just cause and excuse.

[11]This was the reason she filed representations under *Section 20* of the Act against both CIMB and PwC. Her representations were referred to the Industrial Court and registered as two separate cases. Hence, two awards by the Industrial Court and two judicial review proceedings heard together by this Court.

[12]PwC had offered the applicant a fixed term contract on its own violation, which did not concern the Programme, but was refused by the applicant.
The decision of the Industrial Court

[13]It is opportune that at this stage, I address the complaint on the approach taken by the Industrial Court. The applicant contended that the approach was wrong and a misdirection on the law by the Industrial Court. I am unable to agree with the contention and found that the Industrial Court had correctly approached the matter before it and had not misdirected itself in law or committed any error of law as contended by the applicant. I found Industrial Court, first of all, had correctly referred to the established function of the Industrial Court propounded in *Goon Kwee Phoy v J & P Coats (M) Bhd* *[1981] 2 MLJ 129* and *Wong Yuen Hock v Syarikat Hong Leong Assurance & Another Appeal* [1995] 3 CLJ 344 which is to address the matter of dismissal before it by asking whether there was a dismissal on the facts and if there was a dismissal, whether such dismissal was with just cause and excuse.

[14]The Industrial Court then in addressing the main question ie whether there was a dismissal on the facts, in view of the issues raised before it ie whether the Programme and the Tripartite Training Contract was itself a contract of employment under which the contracts with PwC and CIMB were made or whether the contracts of employment with PwC and CIMB were genuine fixed term contracts, set out the approach it had to take:

(a) the first was to ask itself whether or not the contracts of employment with PwC and CIMB were genuine fixed term contracts, and if upon finding that they were not genuine fixed term contracts of employment to determine whether there was a dismissal; and

(b) the second was to ask itself, in the event it is found that there is a dismissal, whether the said dismissal was with just cause and excuse.

It is clear that if the Industrial Court finds that the contracts are genuine fixed term contracts then the question whether there is a dismissal or not does not arise as the end of a fixed term contract would spell the end of the applicant's tenure by effluxion of time.

[15]A perusal of the impugned awards show that the Industrial Court in determining whether the contracts were fixed term contracts had addressed the issue with the heading *"Was the CIMB Fusion Programme/ACA Tripartite Training Contract an employment contract"* and arrived at the conclusion that they were not. This finding itself was made a ground of review by the applicant to challenge the decision of the Industrial Court as will shortly be seen below. The applicant was blowing hot and cold. I therefore held that the complaint of the approach taken as a misdirection in law or error of law completely devoid of merit.

[16]The Industrial Court made the following findings on the construction of the Programme and contracts:

(i) According to the Tripartite Training Contract the Programme was a training programme provided by the training organisations (ie PwC and CIMB) with fixed term employment entered into separately with the training organisations.

(ii) There was no fixed term contract for the 3rd milestone issued to the applicant as her fixed term contract for the 2nd milestone contract expired due to effluxion of time on 1st July 2015.

(iii) On the issue whether the Programme and the Tripartite Training Contract was a training programme or an employment contract — it was found to be a training programme, where trainees were given requisite training *via* job rotations under two different organisations to ultimately assess their suitability for full time employment. In order for the training to be carried out the trainees were given fixed term employment contracts to govern the applicant's training at PwC and CIMB respectively.

(iv) The fixed term contract for the 3rd milestone had not been issued yet at the time the applicant was removed from the Programme and therefore PwC was not obliged issue a fixed term contract of employment to the applicant. It is not the function of the Industrial Court to interfere with the prerogative of the training organisation to remove a trainee from the Programme for failing to meet the training organisations expectations.

(v) The Programme or the Tripartite Training Contract was were not a contract of employment.

(vi) The strict requirement for warnings does not apply to a trainee under the fixed term contracts.

and arrived at the conclusion that since the 2nd milestone fix term contract had expired by effluxion of time, there can be no dismissal and therefore the question whether the dismissal was without just cause and excuse does not arise.

Grounds of review

[17]The applicant challenged the award made in favour of CIMB and the award made in favour of PwC on the same following grounds:

(i) The Industrial Court misdirected itself in law when it asked the wrong question ie whether the employment contract between the applicant and CIMB and PwC was a genuine fixed term contract as opposed to whether the construction of the terms and conditions of the Programme led to a conclusion that the Programme itself was the contract of employment.

(ii) The Industrial Court erred in law when it found that the Programme did not amount to a contract of employment. In doing so the Industrial Court had misdirected itself and/or failed to take into account a relevant consideration in that the Programme and the terms and conditions thereof constitutes the 'mother contract' 'and/or the umbrella contract which was also the 'hybrid' contract under which the appellant is entitled to a legitimate expectation to be employed and trained for a period of 4 years.

(iii) The Industrial Court erred in law when it equated the Programme and the Tripartite Training Contract as being one and the same. In this regard the Industrial Court had misdirected itself on the facts and/or failed

to take into account a relevant consideration in that the Tripartite Training Contract is one out of 5 contracts which are subjugated under the Programme and not on par with it.

(iv) The Industrial Court erred in law and/or misdirected itself in law when it abdicated its functions in refusing to interfere with the management prerogative to assess the appellant's performance and suitability of the training organisation. In this regard the Industrial Court had failed to take into account relevant considerations and/or ignored the clear and available evidence that the applicant's performance appraisals showed that her performance were rated as exceeding expectations and therefore there was no basis for the decision to remove the applicant from the Programme.

(v) The Industrial Court erred in law when it decided that the letter dated 10th August 2015 did not amount to a termination letter and that because the Programme and the Tripartite Training Contract was not an employment contract there was no dismissal to begin with. In this regard the Industrial Court had failed to take into account the relevant consideration that the decision taken on 10th August 2015 to remove the applicant from the Programme came over a month after the purported fixed term contract with CIMB which in fact is inconsistent with the finding of the Industrial Court.

(vi) The Industrial Court erred in law and/or misdirected itself in law when it took the view that the applicant was a mere "trainee" and not opposed to an employee and therefore was not entitled to a warning prior to the applicant's removal and/or dismissal. In this regard the Industrial Court had failed to consider the employment aspects of the Programme and that CIMB and PwC was obliged to give the applicant a 'reasoned decision' for the course of action that would be taken by CIMB and PwC.

(vii) The Industrial Court erred in law and/or acted unreasonably in finding that there was no dismissal because the Programme and the Tripartite Training Contract were not employment contracts. The Industrial Court further erred in law when it failed to consider that CIMB had by their own admission acknowledged that the applicant had been dismissed from employment by both CIMB and PwC effective 1st July 2015 *vide* letter dated 10th August 2015.

(viii) The Industrial Court erred in law and/or misdirected itself when it failed to recognise that in cases where reinstatement was impossible compensation in lieu of reinstatement could be ordered.

[18]It is trite and settled law that the grounds raised by the applicant i.e *illegality* and *irrationality* permits this Court to go into the substance of the decision, that is to say, the merit of the decision. However, where finding of facts are called in question, this Court is not permitted to interfere with the findings of fact made by the trial tribunal on the evidence except if they fall within the following exceptions stated by the Federal Court in *Ranjit Kaur S Gopal Singh v Hotel Excelsior (M) Sdn Bhd* [2010] 8 CLJ 629: where the trial tribunal has:

(a) the trial tribunal had relied on an erroneous factual conclusion which offends the principle of legality and rationality, or

(b) there is no evidence to support the conclusion reached by the trial tribunal.

[19]In this regard, as stated in Wade and Forsyth *Administrative Law* (7th Edn, 1994 at p 312), 'no evidence' does not mean only a total dearth of evidence, it extends to any case where the evidence, taken as a whole, is not reasonably capable of supporting the finding or where, in other words, no tribunal could reasonably reach that conclusion on that evidence.
Decision of the court

[20]The grounds of review overlap and are therefore for convenience addressed under the headings below.
The Programme whether an (umbrella contract' of employment?

[21]The first concerns the Programme document. The Industrial Court was criticised for committing an error of law in failing to construe the Programme document as an umbrella contract of employment and also a 'hybrid' contract under which the appellant has a legitimate expectation to be employed and trained for a period of 4 years. The Industrial Court was also criticised for treating the Tripartite Training Contract equal to and not subjugated to the Programme document.

[22]It was argued in support of this ground that the terms of the Programme document show that it is a continuous employment for a period of 4 years and the Industrial Court was side tracked with labels found in the two employment contracts; the first one PwC and the second one with CIMB. Based on the argument it was submitted that the Industrial Court committed an *irrationality and/or illegality* error warranting the awards to be quashed.

[23]This ground called for the certain principles of construction of contracts, based on the arguments made before me, in determining whether the Industrial Court had arrived at a correct interpretation of the documents before it. As such, I kept in mind the principles established by the Court of Appeal in the following cases cited by counsel. The first is *Sia Siew Hong & Ors V Urn Gim Chian & Anor* [1996] 3 CLJ 26 where the following principle on the true relationship of the parties and not simply from labels' that parties have affixed to that relationship in a contract:

> In all such cases the duty of the Court is clear. And that duty is to construe the document as a whole and to determine from its language and any other admissible evidence its true nature and purport. As Jenkins LJ observed in *Addiscombe Garden Estates Ltd V Crabbe* *[1958] 1 QB 513*; at p, 528; *[1957] 3 All ER 563*; at p, 570; *[1957]3 WLR 980* at p. 991 **:**
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> > …the relationship is determined by the law, and not by the label which the parties choose to put on it, and that it is not necessary to go as far as to find the document a sham. It is simply a matter of ascertaining the true relationship of the parties.

[24]The second case is *Datuk Yap Pak Leong v Sababumi (Sandakan) Sdn Bhd* [1997] 1 CLJ 23 where the duty of the court in construing documents was stated as follows:

> It is trite law that the primary duty of a Court in construing a written contract is to endeavour to discover the intention of the parties from the words of the instrument in which the contract is embodied. Of course, the whole of the instrument has to be considered, since the meaning of any one part of it may be revealed by other parts and the words of every clause must if possible be construed so as to render them all harmonious one with another. If the words used are unambiguous the Court must give effect to them, notwithstanding that the result may appear capricious or unreasonable, and notwithstanding that it may be guessed or suspected that the parties intended something different. The Court has no power to remake or amend a contract for the purpose of avoiding a result which is considered to be inconvenient or unjust On the other hand, if the language is open to two constructions, that will be preferred which will avoid consequences which appear to be capricious, unreasonable, inconvenient or unjust 'even though the construction adopted is not the most obvious or the most grammatically accurate.

[25]I am unable to agree with the submission of counsel. The Programme document is not even a contract, what more an umbrella contract. It is also not a contract of employment. PwC and CIMB did not guarantee anything in the Programme document. Instead, the Programme document is merely informative in nature. It merely provides information on what the CIMB Fusion Programme with PricewaterhouseCoopers is all about, namely, it is a collaboration between CIMB and PwC and sets out the training measures under the programme with the ultimate aim of producing a professional with experience in two sectors and possible employment at the end of the programme which spans 4 years. The person interested in the 1st and 2nd years join as an associate with PwC. In the 3rd year that person will join CIMB as an assistant manager and in the 4th year re-join PwC as a senior associate. In the 4 years, the person will obtain professional qualification by completing successfully the relevant professional examinations. In this regard it is not in dispute that employment with CIMB or PwC is not guaranteed upon the completion of the Programme.

[26]A person who applies to join the Programme is given a letter of offer by PwC for the 1st and 2nd years and CIMB for the 3rd year. Only upon a person accepting without qualification the offer in the said letters does a contract of employment come into existence based the terms and conditions of employment attached to the said letters of offer. The terms and conditions require the person to enter into a Tripartite Training Contract and a Loan Agreement to complete the professional accounting qualification. The Programme document was therefore rightly held by the Industrial Court as not being an employment contract.

[27]The Industrial Court was correct in finding that the Tripartite Training Contract is a training contract that is binding the applicant, PwC and CIMB according to the terms and conditions therein. It was not an employment contract and this was made certain by the "for the avoidance of any doubt" clause in the form of clause 6 which state:

> For avoidance of doubt, this Training Contract is not a contract of employment between the Trainee (the applicant) and the Training Organisations (CIMB and PwC). The terms of the Trainee's employment is governed by the Offer Letter for Employment dated 18th September 2012 (including any amendments thereto) with PwC, the Offer Letter for Employment dated 16th April 2012 with CIMB and the subsequent Offer Letter for Employment dated 4th April 2012 (including any

amendments thereto) with PwC and the Training Organisations respective Employees' Handbook(s) (hereinafter referred to as the "Employment Contract").

[28]Reading the contract as a whole, the Tripartite Training Contract is a training contract. The contract makes this clear by clause 2 of the contract which state;

Clause 2 provides that training will take place as follows: (i) training with PwC for 18 months (excluding probation period) after confirmation of employment contract; (ii) training with CIMB under a 12-month employment contract; (iii) and training for the remaining 18 months under a further 18-month employment contract.

[29]The Industrial Court was also correct in finding that there were only two employment contracts, one with PwC and the other with CIMB that were fixed term contracts. The employment contract with PwC came into existence after the applicant accepted the offer in the letter of offer dated 4th April 2012 wherein PwC offered the applicant a fixed term employment contract as an associate for a period of 21 months subject to the memorandum of terms and conditions of employment. The terms and conditions of employment in the said memorandum provide as follows:

(i) The contract period will be 21 months commencing 18th September 2012 and the contract will automatically cease with effect from 1st July 2014.

(ii) The Programme will run for a period of 4 years from the date of joining.

(iii) The applicant is required to sign a Tripartite Training Contract with CIMB and PwC and a loan agreement detailing the terms and conditions of the loan required to complete a professional qualifications examination which is either the ICAEW or ACCA.

(iv) Under the Programme the applicant will be employed for a total of 4 years. During the first two years of the Programme, the applicant will be employed by PwC, then in the third year the applicant will be employed by CIMB and in the final year, the applicant will be employed back by PwC.

(v) At anytime during the duration of the Programme, if the applicant's performance does not meet PwC and/or CIMB's expectation, PwC and/or CIMB will inform you and decide on the appropriate course of action.

(vi) Upon successful completion of the applicant's professional qualification examination and at the end of the Programme and at the discretion of PwC and/or CIMB you may be offered employment by PwC or the CIMB.

[30]The employment contract with CIMB came into existence after the applicant accepted the offer in the letter of offer dated 16th April 2012 wherein CIMB offered the applicant a fixed term employment contract as an assistant manager for the 3rd year of the Programme for 12 months subject to CIMB's main terms and conditions of employment attached to the said letter of offer. The employment was also made subject to the Tripartite Training Contract. The terms and conditions of employment as agreed are similar to the PwC's memorandum of terms and conditions of employment. It was a term of the contract that the applicant is required to sign the Tripartite Training Contract and contract period was worded as follows:

Upon successful completion of your first 21 months with PwC you shall commence employment with the Company (CIMB) for one (1) year commencing 1st July 2014 to 30th June 2015. This contract shall automatically cease with effect from 1st July 2015 without any further notification from the Company

[31]The Industrial Court was correct in law by holding that both the above employment contracts were fixed term contracts having regard to the contracts when read as a whole respectively. I am satisfied that this is not a case where the label does not reflect the agreement of the parties. The contracts are fixed term contracts and expired on the effluxion of time.

[32]The fixed term contract with CIMB expired automatically on 30th June 2015. After the expiry, there did not exist another contract of employment between the applicant and PwC due to the applicant being removed from the Programme. As such, the Industrial Court was correct in law in holding that *there was no dismissal from employment* under the contract with CIMB.

Management prerogative and reasons for decision

[33]The next ground concerns management prerogative in removing the applicant from the Programme and the failure to give a reasoned decision. It was alleged that the Industrial Court committed an error of law in failing to interfere with CIMB's management prerogative in arriving at a decision concerning the applicant's performance

expectation and job suitability to remain in the Programme and the need for a reasoned decision from CIMB and PwC for removing the applicant from the Programme.

[34]The applicant claimed that the letter dated 10th August 2015 was a dismissal letter. This is not correct. The applicant was not offered the 4th year contract of employment with PwC. Her 3rd year contract of employment expired by effluxion of time. The said letter contained the reason for removing her from the Programme and was worded as follows:

> CIMB Fusion Programme with PWC
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> We refer to our letter of appointment dated 16th April 2012.
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> During the past one year, we have monitored your performance and noted that *you have not met the performance expectations and requirements expected of you under the CIMB Fusion Programme.* Further to this, CIMB and our partner PricewaterhouseCoopers have jointly decided to remove you from the Programme. As provided for under the letter dated 16th April 2012, the said contract had automatically ceased with effect from 1st July 2015.

[35]The CIMB award reveals that the Industrial Court did make its decision of not interfering with the said management prerogative out of nothing. The applicant was said to have not met the performance expectations and requirements expected from the applicant as the reason. The Industrial court found that based on the facts of this, in particular, the fixed term contract with CIMB concerning a trainee under a graduate's programme, the requirement of warning is not suitable. The problems with the applicant began in June 2015 which is the last month before the 3rd year contract was to expire. The contract would expire at the end of its term with no provision of extension such as with full time employees.

[36]The Industrial Court accepted the evidence of Pan Soo Lee ("COW-3"), the Vice-President, Graduate Programme of CIMB that the manner of assessment and the requirement of counselling was provided under the training contract. COW-3 said that the applicant failed to develop capacity for further development and growth either as trainee or potential employee. It was said that on several occasions the applicant refused to co-operate and had difficulty in complying with instructions. The most damaging was that the applicant had compromised professionalism, work quality and agility with the following examples:

(a) failure to deliver work assignments as promised (carer/reflection report) to career counsellor;

(b) indicating that she does not require coaching and guidance from the CIMB's career counsellor;

(c) dropping out of career counselling sessions unilaterally;

(d) unreceptive to feedback's;

(e) disrespectful and unprofessional when dealing with CIMB's management; and

(f) unwilling to co-operate with CIMB's management and disrupting the course of the Programme.

[37]The Director in Group Human Resource of CIMB, Brenda Ann Murugesu ("COW-1") testified that she provided the applicant with counselling along with other trainees under the Programme but in the course of time, the applicant became unreceptive when she was told that she was doing things wrongly. The applicant refused to do a reflection report when asked to do so. The applicant became hostile and antagonistic towards COW-1 and began painting her in bad light and was even prying into CIMB's clients.

[38]The other behaviour of the applicant which CIMB found unacceptable were the incidents concerning 'leave' during the last month with CIMB. It was not disputed that the applicant got her mother to write to her superiors with regard to her application for un-paid leave. The applicant's excuse was that she was busy with exams despite the fact that the emails were sent past working hours. The Industrial Court found this to be unacceptable behaviour of a trainee who is not even confirmed as an employee. The Industrial Court said that it experienced first hand of the applicant's behaviour when she had gone missing on the hearing date of 10th February 2020 leaving her own counsel in the dark as to her whereabouts. The hearing had to be adjourned to the afternoon but counsel was still in the dark over her disappearance from court. It was only on the next day that counsel informed the court that the applicant was on medical leave.

[39]The Industrial Court after setting out the behavior of the applicant went on to conclude as follows:

> As stated above, the claimant was under a Training Programme. It was incumbent on her, being a trainee, to satisfy the Bank as to her performance and job suitability. It would be best left to the Training Organisations (i.e PwC and CIMB) to assess the claimant's performance. This court will not interfere with the management prerogative of the Training Organisations in deciding how the training should be conducted or how the Training Organisations should conduct themselves towards the claimant. The claimant was being assessed throughout the training programme, therefore there was no special necessity to give her prior written warning about her performance and behaviour.

[40]I find no error of law in the Industrial Court's finding and conclusion. In the instant case, the training organisations are in the best position to assess their trainee and whether the trainee meets their performance expectation and suitability. It is for them to determine the course of conduct to take with their trainee being a management prerogative. In my view, the course of action taken was certainly not perverse or unreasonable. It is not a decision that no reasonable tribunal would reach on the evidence.
The letter of 10th August 2015

[41]It was contended that the Industrial Court failed to take into account the relevant consideration that the decision taken on 10th August 2015 to remove the applicant from the Programme came over a month after the purported fixed term contract with CIMB had expired. I found nothing wrong with the decision of the Industrial Court. The letter dated 10th August is not a termination letter. The letter says clearly that as provided for under the letter dated 16th April 2012, the said contract had automatically ceased with effect from 1st July 2015. That is to say that there is no termination but the fixed term contract had expired.

[42]The decision to remove the applicant from the Programme could only come after PwC and CIMB decided what course of action to take. This is in line with the terms and conditions of the contract of employment with CIMB and PwC respectively which states that "if at any time during the duration of the Programme, if the applicant's performance does not meet PwC and/or CIMB's expectation, PwC and/or CIMB will inform the applicant and decide on the appropriate course of action". The applicant was informed not to report at PwC by email dated 30th June 2015. Then at a meeting held on 23rd July 2015, PwC informed the applicant that CIMB found that the applicant did not meet the Programme's requirement. After this, there was only one thing left to do — which was to decide the "appropriate course of action" to be taken with regards to the applicant This action was conveyed to the applicant *vide* the letter dated 10th August 2015. Thus, what was being communicated in the letter was the applicant's removal from the Programme and not her dismissal from employment. There was no dismissal as the fixed term CIMB contract of employment had expired by then. Dismissal from employment had become an impossibility.
Conclusion

[43]For the above reasons there is no reason for this Court to interfere with the impugned awards of the Industrial Court. The judicial review applications were accordingly dismissed.

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