

CONSTRUCTIVE TERMINATION AND THE SHIFT OF ONUS PROBANDI.



Sometimes workplace environments can become unbearable, leaving employees with little choice but to resign. In legal terms, this situation is known as **constructive termination**. This concept arises when an employee's decision to leave their job is not entirely voluntary, but rather a direct result of their employer's actions or the working conditions imposed. Constructive termination is a complex area of employment law, and it requires a clear understanding of the legal framework surrounding such claims.

This article provides a detailed explanation of constructive termination, examining the legal principles, key case law, and practical considerations for employees seeking recourse in these situations. Through this overview, we aim to shed light on the intricacies of constructive termination and offer guidance on how employees can navigate the legal process to assert their rights.

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Understanding Constructive Termination.

Under employment law, unfair termination doesn't only encompass cases where an employer directly dismisses an employee. It also includes constructive termination. According to ***Section 36(a)(ii) of the Employment and Labour Relations Act (CAP 366 R.E 2019), read together with Rule 7(1) to (3) of the Employment and Labour Relations (Code of Good Practice) Rules GN 42/2007***, constructive termination occurs when an employee resigns due to intolerable working conditions created or sustained by the employer. In simpler terms, an employee is forced to leave their job because their employer's behavior or treatment becomes so unreasonable that continuing the employment relationship is no longer possible.

This type of termination is often a gray area in law, as it involves a situation where the employee feels that resignation is the only way to preserve their dignity, health, or well-being. Here, the employer may not explicitly fire the employee, but their actions (or inaction) effectively force the employee to quit.

The Legal Framework: Kobil Tanzania Limited v. Fabrice Ezaovi.

A key case that helps clarify the concept of constructive dismissal is Kobil Tanzania Limited vs Fabrice Ezaovi (Civil Appeal 134 of 2017) [2021] TZCA 477 (16 September 2021). In this case, the Court of Appeal outlined several important factors that must be considered when determining whether constructive termination has occurred:

- **Did the Employee Intend to End the Employment Relationship?** The court emphasized that for termination to be considered constructive, it must be clear that the employee's resignation was a consequence of the employer's actions, rather than the employee's own decision to end the relationship. If the employee's intention was not to terminate the relationship but was forced to do so due to the employer's actions, then constructive dismissal may be applicable.
- **Were the Working Conditions So Intolerable That the Employee Could No Longer Fulfill Their Duties?** The court recognized that intolerable conditions are context-specific. What constitutes an intolerable work environment depends on the unique facts and circumstances of each case. A pattern of unreasonable behavior, such as harassment, failure to pay wages, or denial of basic workplace rights, could be deemed intolerable. The severity and persistence of the employer's actions are critical factors.
- **Is the Employer Responsible for Creating These Intolerable Conditions?** The court also asks whether the employer's actions or lack thereof, were directly responsible for the conditions that led to the employee's resignation. The onus is on the employee to prove that the employer's actions were the primary cause of the intolerable work environment.

- **Was the Intolerable Situation Likely to Continue, Justifying the Employee's Decision to Resign?** In situations where intolerable conditions have persisted over time, the court examines whether the employer has shown any indication that the situation would improve. If there's no reasonable expectation that the conditions will change, the employee might be justified in resigning.
- **Was Resignation the Only Reasonable Option for the Employee?** This is perhaps the most crucial point. The employee must demonstrate that they explored all available remedies before deciding to resign. This includes attempting to resolve the issue internally through grievance procedures or engaging in dialogue with the employer. The **Principle of the Last Resort Remedy** asserts that resignation should only occur when no other remedy is available or effective.

The Shift in the Onus Probandi.

In most labor disputes, the burden of proof (onus probandi) falls on the employer, who is required to demonstrate that their actions were lawful and justified. However, in cases of constructive termination, the **onus shifts to the employee**. The employee must now prove that the conditions they experienced were intolerable and that their resignation was not voluntary but a consequence of the employer's conduct.

This shift in the burden of proof can make constructive termination cases particularly challenging for employees. It's important for employees who believe they have been constructively dismissed to ensure they meet the legal requirements and conduct due diligence in gathering evidence. Documentation of incidents attempts at resolution, and a clear timeline of events can help bolster their case.

Key Takeaways for Employees Claiming Constructive Termination.

1. **Document Everything:** Employees must keep a record of any actions or incidents that led to their resignation. This documentation is crucial for proving that the employer's behavior was unreasonable.
2. **Exhaust Internal Remedies:** Before resigning, employees should use all available internal grievance procedures or dispute resolution mechanisms. If these fail, the employee can invoke the Principle of the Last Resort Remedy, strengthening their claim for constructive termination.
3. **Be Aware of Legal Requirements:** Employees must be aware of the legal framework surrounding constructive termination in their jurisdiction, such as the provisions under the Employment and Labour Relations Act and related rules. Ensuring compliance with the law can make or break a constructive termination claim.
4. **Prove the Employer's Responsibility:** The employee must show that the employer's actions or failure to act were the direct cause of the intolerable conditions. Without this, a claim for constructive termination may not succeed.

Conclusion.

Constructive termination is a complex issue that requires employees to provide detailed evidence to substantiate their claims. Unlike other employment disputes where the employer bears the burden of proof, employees must take the lead in proving that they were forced to resign due to intolerable working conditions created by the employer. By understanding the legal criteria and ensuring that all available remedies have been exhausted, employees can increase their chances of successfully pursuing a constructive termination claim. In the end, this area of employment law is a reminder of how important it is for both employees and employers to foster fair and respectful workplace environments

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