

# Constructive dismissal in Botswana

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16 Apr 2015

Constructive dismissal is simply a situation when an employer creates such working conditions (or so changes the terms of the employment contract) that the affected employee has no choice but to resign. In such cases the employee retains the right to receive compensation as having been dismissed unfairly.



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This notion usually falls under the principle of unfair labour practice. In a leading case of *Moremi v Westhynd Security (Pty) Ltd* 1998 BLR 287 (IC) it was held that constructive dismissal means the termination of a contract of employment by an employee under circumstances which make the termination tantamount to, virtually or in substance, the termination of employment by the employer.

The most important thing to know is that the termination is done by the employee and not the employer. It is important for the employees to ensure that they afford the employer a fair opportunity to rectify the 'intolerable' situation before they hand in their resignation and claim constructive dismissal. It is also extremely important that employers do not deal with grievances received from employees lightly, and that they actively put in an effort to follow the formal grievance procedure or policy when they receive formal grievances from employees.

## Examples of complaints

Here are a few examples where complaints of constructive dismissals may be successful in our Labour Courts:

- The employer failed to pay the employee as agreed in the contract of employment.
- The employer set unreasonable work targets for the employee and disciplined the employee for failing to meet these targets. The employee was also excluded from training opportunities and some of the other public functions of the enterprise.
- The employer made deductions from wages without a valid reason, insulted an employee and said that he did not like the employee due to his political affiliation.
- The employer treated the employee in a threatening, insulting and aggressive manner and exerted prolonged pressure on the employee to resign.
- The employer did not stop sexual harassment committed against an employee.
- The employee was required to apply for his own position and his application was unsuccessful.

Once a constructive dismissal is proved by the employee, the onus will then shift to the employer to prove that the dismissal was fair. At the end of the day, our Labour Courts will have to consider the circumstances with a view to establish whether an employer's conduct as a whole was justified.

## ABOUT THE AUTHOR

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