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Employer Liability and Risk Management in Constructive Dismissal Claims

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Introduction

Constructive dismissal, also referred to as constructive discharge, occurs when an employee resigns because the employer's actions (or inaction) have made the work environment intolerable or has breached fundamental terms of the employment contract.^[1] In such situations, the resignation is not truly voluntary, although the employer does not directly terminate the employee's employment, their conduct however effectively leaves the employee with little or no reasonable choice but to leave.

Constructive dismissal differs from wrongful termination in both cause and legal characterization. Constructive dismissal arises when an employer's conduct causes a fundamental breach to the employment relationship by creating intolerable or hostile working conditions that effectively compel the employee to resign. In contrast, wrongful termination occurs when an employer expressly ends the employment relationship in a manner that breaches the express or implied terms of the employment contract.^[2] This can include actions such as failing to give the contractually required notice, not paying owed benefits, or failing to follow the employer's stipulated disciplinary or procedural requirements agreed upon before dismissing an employee. Conducts that amount to constructive dismissal, on the other hand, include significant changes to employment terms, non-payment or reduction of salaries, indefinite suspension without pay^[3], placing ridiculous and unreasonable work demands^[4] on employees, demotion without cause, failure to provide safe working environments,^[5] amongst others. Where an employee is compelled to resign due to the intolerable work environment created by the conduct of the employer, such employee is entitled to treat themselves as having been dismissed, and the employer's conduct is often referred to as a repudiatory breach of the employment contract.^[6]

1. [1] Ralph-Malix Legal Consult (2024), 'The Doctrine of Constructive Dismissal of an Employee in Nigeria', available at <https://ralphmalixlegal.wordpress.com/2024/09/04/the-doctrine-of-constructive-dismissal-of-an-employee-in-nigeria/>, accessed 23rd January 2026.

2. [2] Clare Farmer, (LEGALVISION, 2022), 'The Difference Between Unfair Dismissal and Wrongful Dismissal in the UK', available at <https://legalvision.co.uk/employment/unfair-wrongful-dismissal/#:~:text=Wrongful%20dismissal%20i> accessed 23rd January 2026.

3. [3] 'Patrick Emmanuel Esq (Sabilaw , 2023), 'The Principle of Constructive Dismissal Under Nigerian Labour Law', available at <https://sabilaw.org/the-principle-of-constructive-dismissal-under-the-nigerian-labour-law/> accessed 23rd January 2026.

4. [4] Ibid.

5. [5] SETYAN LAW (2025), 'Constructive Dismissal Examples and Insights', available at <https://setyanlaw.com/constructive-dismissal-examples/>, accessed 23rd January 2026.

6. [6] Supra (note 3).



Legal Framework In Nigeria

Constructive dismissal is recognized as a form of unfair termination in Nigeria when it is proven that the employer's actions forced the employee to resign; consequently, various laws provide frameworks for addressing the concept. Some of these laws include:

- **Common law:** Constructive dismissal is a doctrine that is rooted in common law. Under common law, where a party commits a fundamental breach of contract, the other party may treat the contract as terminated and claim damages, underscoring the sanctity of agreements and contracts as expressed in the Latin maxim *Pacta sunt Servanda*. In the context of employment, the employer, having failed to be bound to the contractual agreement by breaching fundamental terms, entitles the employee to treat the contract as terminated and claim damages as a result.
- **International Standards:** The concept of Constructive dismissal is rapidly gaining prominence in international law. In *MS. F.L. v. ITU*^[7], the Administrative Tribunal of the **International Labour Organization** defined constructive dismissal in the following words:
“Constructive dismissal denotes a situation in which an organization engages in conduct such as to indicate that it no longer considers itself bound by the fundamental terms of the employment contract with the consequence that, if the employee then terminates the contract, he or she is entitled to relief on the basis that the organization wrongfully terminated the contract.”

The Termination of Employment Convention of 1982 (C158) adopted by the International Labour Conference on 2nd June 1982^[8], also protects against unfair and unjust workplace dismissals.

- **Case law:** Nigeria lacks specific provisions covering constructive dismissal in the Labour Act 2004^[9]. However, the concept has been acknowledged and applied in numerous legal cases. The National Industrial Court in Nigeria, in its decisions, has recognized and applied the concept of constructive dismissal in deserving cases. The court in **MISS EBERE UKOJI V. STANDARD ALLIANCE LIFE ASSURANCE CO. LTD**^[10], held thus-

[7] (Judgment No. 2967, of ILOAT consideration 9).

[8] NORMLEX Information System on International Labour Standards. 'C158 - Termination of Employment Convention, 1982 (No. 158)' International Labour Organization' available at https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:12100:::12100:P12100_INSTRUMENT_ID:312303, accessed 27th January 2026.

[9] Labour Act, CAP L1, Laws of the Federation of Nigeria 2004.

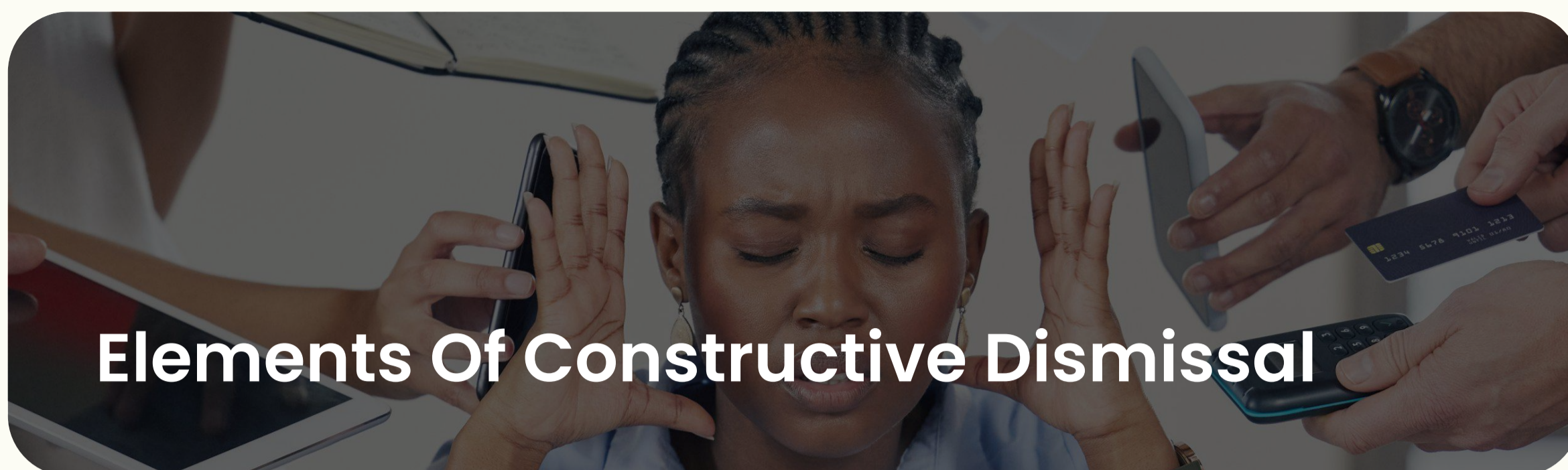
[10] [2014] 47 NLLR [Pt 154] 531.

“Globally, and in labour/employment law, constructive dismissal, also referred to as constructive discharge, occurs when an employee resigns because his/her employer’s behaviour has become intolerable or heinous or made life difficult that the employee has no choice but to resign. Given that the resignation was not truly voluntary, it is in effect a termination. In an alternative sense, constructive dismissal or constructive discharge is a situation where an employer creates such working conditions (or so changes the terms of employment) that the affected employee has little or no choice but to resign. Thus, where an employer makes life extremely difficult for an employee, to attempt to have the employee resign, rather than outright firing the employee, the employer is trying to create a constructive discharge. The exact legal consequences differ from country to country but generally, a constructive dismissal leads to the employee’s obligations ending and the employee acquiring the right to seek legal compensation against the employer. The employee may resign over a single serious incident or a pattern of incidents, generally, the employee must have resigned soon after the incident.”

In **ENGINEER GODWIN OKPIAVBE v. COMMUNICATION CLEAN ENERGY TECHNOLOGY OGUA ENERGY**^[11] The National Industrial Court shed further light on what amounts to constructive dismissal. In Paragraph 38, **A. A. ADEWEMIMO J.** explained as follows:

“The allegation levied against the defendant is forced resignation and in employment law this is tantamount to constructive dismissal. Constructive dismissal arise when an employee is forced to resign or leave the employment, as a result of serious breach of contract, bullying, unfair treatment, stoppage or reduction of wages, etc.”

[11] NICN/BEN/45/2022.



Elements Of Constructive Dismissal

Like all other civil claims, a claim for constructive dismissal must be proved by the party asserting it. In matters bothering on constructive dismissal, the employee bears this burden. In **WESTERN ESCAVATING V. SHARP**^[12] **Lord Denning** outlined 4 elements to be established by the employee in the case of constructive dismissal as follows:

a. A Repudiatory Breach on the Part of the Employer

The employee must establish that the conduct of the employer was intolerable and amounted to a serious breach of the terms of his employment, sufficient to justify the resignation of the employee^[13]. The National Industrial Court in its Judgment in **BARR. NNAA LELEBABARI PYABARA v. BARR. PRINCE JOEL O. WILLIAMS & 2 ORS**^[14] per **HAMZA J** In paragraph 51 held thus-

“On relief no. 1, this Court has consistently held that failure to pay an employee’s salary for work done constitutes a clear breach of the employment contract and an unfair labour practice.”

b. An Election by the Employee to Accept the Breach and Treat the Contract as at an End

Here, the employee decides to accept that the contract has been fundamentally broken by the employer and chooses to treat the contract as terminated right then, rather than continuing under it.

c. The Employee Must Resign in Response to the Breach

The employee must resign in response to the breach. The fact that the employee merely complains while continuing under the employment does not suffice. Where he continues for any length of time without leaving, he will lose his right to treat himself as discharged^[15]. He will be regarded as having elected to affirm the contract^[16]. The National Industrial Court in its judgment in **JOSEPH OKAFOR v. NIGERIAN AVIATION HANDLING COMPANY PLC**^[17] per **B. B. KANYIP J**, in Paragraph 61 stated thus-

[12] (1978) Q.B 761.

[13] Supra (note 7).

[14] NIC/PHC/14/2024.

[15] Benjamin Burgher (Law Brief Publishing, 2020), ‘Constructive Dismissal – Practice Pointers and Principles’ LAW BRIEF PUBLISHING available at https://www.lawbriefpublishing.com/2020/10/free-chapter-from-constructive-dismissal-practice-pointers-and-principles-by-benjamin-burgher/?utm_source=chatgpt.com accessed 26th January, 2026.

[16] Ibid.

[17] NICN/LA/291/2016.

“...and to be able to succeed in a claim for constructive dismissal, the claimant must show that he resigned soon after the incident(s) he is complaining about.”^[18]

d. The Employee Must Not Delay Too Long in Accepting the Breach, as It Is Always Open to an Innocent Party to Waive the Breach and Treat the Contract as Continuing (Subject to Any Damages Claim That They May Have).

In constructive dismissal cases, the employer must act in a way that shows they are no longer willing to follow the main terms of the employment contract. When this happens, the employee is justified in resigning and treating the situation as a dismissal. The National Industrial Court in the case of **MR BABATUNDE KOMOLAFE v. TOMEZ GROUP LIMITED**^[19] emphasized the importance of the employer’s intention in constructive dismissal cases and stated that because the employer showed a willingness to re-hire the claimant, there was no intention to force the claimant out of employment, which undermined his claim for constructive dismissal.



It is important to note that employers found liable for constructive dismissal of employees may face the following consequences:

1. Payment of Damages and Compensation to the affected employee;
2. Payment of legal costs, either to the employee (where awarded) or expenses incurred in defending the claim;
3. Reinstatement of the affected employee (in rare cases);
4. Reputational damage to the company as well as a negative impact on employer-employee relationship.

Remedies And Legal Implications

Employees who have been constructively dismissed from employment reserve the right to pursue legal actions against their employers. These legal remedies include:

- **Right to Monetary Compensation:** The National Industrial Court of Nigeria may grant monetary compensation for constructive dismissal from employment. This compensation typically covers benefits or entitlements lost due to forced resignation, lost salaries and allowances.

^[18] See, <https://www.nicnadr.gov.ng/judgement/details.php?id=1721> accessed 26th January 2026.

^[19] SUIT NO. NICN/LA/498/2019, Delivered on 5th June 2023.

- **Damages:** This is granted for breach of fundamental terms of the employment contract.
- **Reinstatement:** This occurs in rare cases, typically where employment is one with statutory flavour^[20].



1. **Ensure a conducive workplace:** It is both an ethical and legal obligation on the part of employers to ensure that the workplace is conducive for employees to thrive.
2. **Fair Treatment:** Employees should be treated equally and fairly, regardless of the differences they may have
3. **Effective Communication Channels:** Communication channels with employees should be open and effective, as it ensures that disputes are resolved efficiently and effectively.
4. **Follow Fair Procedures:** Ensure that all disciplinary and performance management procedures are fair, consistent, and in accordance with relevant legislation.^[21]
5. **Consult with Employees:** Consult with employees on significant changes to employment conditions, such as changes to working hours or remuneration.^[22]
6. **Proper Documentation:** Ensure that proper documentation on all incidents that could form the basis for constructive dismissal claims is kept, as well as documents or emails supporting them.
7. **Exhaust Internal Grievance Procedures:** Ensure that all internal procedures for handling employee grievances have been followed before resignation is considered.
8. **Seek Legal Advice:** Consult with experienced lawyers to obtain legal advice where necessary.

[20] An employment with statutory flavour is one in which the terms and conditions are regulated by law rather than private contract between parties. This is to the effect that appointment, discipline, and termination under such employment must follow statutory procedures. Any dismissal done outside those procedures stipulated by law is null and void, and the proper remedy is reinstatement with full rights and benefits.

[21] VDM Attorneys, Notaries and Conveyancers, 'Constructive Dismissal: A Guide for Employers and Employees' available at <https://vdm.law/legal-services/employment-and-labour-law/constructive-dismissal> accessed 28th January 2026.

[22] Ibid.

A close-up photograph of a person's hands holding a document, possibly a contract or legal agreement, with a dark overlay on the left side where the word 'Conclusion' is written in white.

Conclusion

The principle of constructive dismissal continues to evolve as a key component of the Nigerian Labour Law, staying informed about legal developments in this area is crucial for both employers and employees. Employees facing unbearable working conditions should seek timely legal advice, as this remains one of the most effective ways of understanding and enforcing their rights, as well as pursuing appropriate remedies.

On the other hand, employers must be mindful that their actions, whether deliberate or not, may give rise to liability where they fundamentally breach the terms of employment. Creating awareness of these rights and obligations, and ensuring that they are effectively enforced, will promote a more balanced, fair, and accountable workplace, where employees are respected and their rights properly safeguarded in Nigeria.

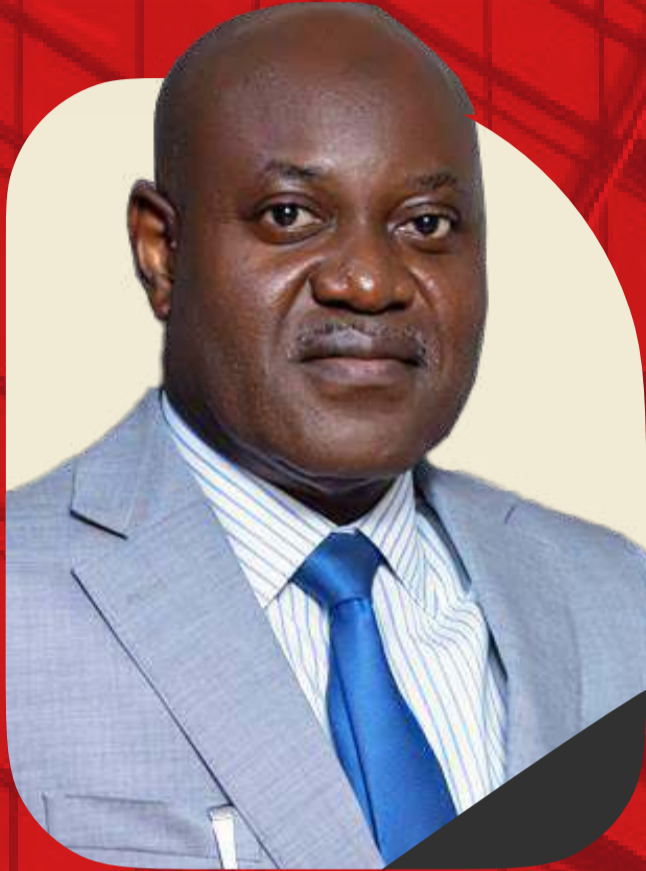


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