



**NENJY || NYAMAPFENE
LAW PRACTICE**



NEWSLETTER 3rd Edition

Dear Reader!

I welcome and thank you for taking time to read and access our newsletter. This issue is a must read. We have important insights to which we would like you to take into account. We are glad you are part of our passion and vision, our aim is to remain as relevant as possible in sharing developments in the law as well as issues affecting persons in light of the law.



Sonia Fashi

Labour Law

What is an employee entitled to upon termination of employment on notice?

An employee is entitled to terminal benefits upon termination of the contract of employment. These are the final entitlements of an employee upon ending the employment relationship. Workers dismissed on notice are entitled to compensation for such loss of employment. The law provides that such employees are entitled to a minimum retrenchment package. The following terminal benefits are awarded to an employee for loss of a job:-

a) Minimum retrenchment package (Severance Pay)

Not all forms of employment termination warrants severance pay. This is compensation awarded to the employee for loss of employment on notice. The Labour Amendment Act, 2015 section 12 C(2) provides that, "Unless better terms are agreed between the employer and the employees concerned or their representatives, a package "minimum retrenchment package" of not less than one month's salary or wages for every two years of service as an employee (or the equivalent lesser proportion of one month's salary or wages for a lesser period of service) shall be paid by the employers as compensation for loss of employment (whether the loss is occasioned by retrenchment or by notice no later than the date when the notice of employment takes effect.

b) Outstanding leave or accrued leave

This refers to leave days that had not been taken by the employee upon termination of such employment relationship. It therefore follows that as an alternative to those accrued leave days, an employee will receive the equivalent in cash of the number of leave days not taken.

c) Notice pay

Not every employee is entitled to notice pay. Notice pay is awarded to an employee whose contract was terminated without notice. An employee will therefore be given the cash as an alternative to notice period. Notice periods differ, 3 months notice is for an employee who was on a contract without limit or a contract of two years or more, it therefore follows that such an employee would be entitled to 3 months pay as an alternative to three months notice period not given, 2 months notice for a person who worked for one year or more but less than 2 years, 1 month notice to a person who worked for 6 months or more but less than a year, 2 weeks notice to a person who worked for 3 months or more but less than 6 months, 1 day for a person who worked for less than three months or in the case of casual or seasonal work.

d) Outstanding salaries

Not every employee is entitled to

outstanding salaries, this refers to salaries owing or salaries in arrears that had not been advanced to the employee. Only an employee who is owed salaries by the employer is entitled to outstanding salaries.

e) Gratuity

The calculation of gratuity is laid down in the Collective Bargaining Agreement for the sector or industry to which an employee belongs. Such calculation differs from Collective Bargaining Agreement to Collective Bargaining Agreement. It is calculated as a percentage of the employee's last month's salary by the number of years of service.

f) Service pay.

This is one of the negotiable entitlements and is payable either if the company policy provides for it or is an entitlement according to the Collective Bargaining Agreement. Apart from these major ones there are other entitlements that can also be awarded to an employee arising from the contract of employment which include vacation or holiday pay if provided for, bonus, housing allowances, transport allowances and other entitlements which were contracted between the employer and the employee and also arising from the Collective Bargaining Agreement of the employee's industry if applicable.



Intellectual Property

Trademarks

What are they?

A trademark is a symbol, word, name, logo, mark, design, expression legally registered as a way of representing a product, services or business. It identifies and distinguishes services or products of one person from those of other persons (competitors in business). It is a brand or brand name used as an identification symbol as a means of distinguishing one's goods and services from those of other competitors on the market.

The Trademarks Act [Chapter 26:04] in section 2 defines a mark as, "any sign which can be represented graphically and is capable of distinguishing the goods and services of one undertaking from those of other undertakings.

The Act further defines a trademark as, a mark which is used or proposed to be used in relation to goods or services for the purpose of indicating a connection in the course of trade between the goods or services and some person having the right, either as proprietor or as registered user, to use the mark, whether with or without any indication of the identity of that person and distinguishing the goods or services in relation to which the mark is used or proposed to be used, from the same kind of goods or services connected in the course of trade with any other person.

Why are Trademarks important?

It is a risk not to register your trademark as this will undermine your product, service or business in the event that someone else uses the same mark as yours.

- The importance of getting your trademark registered is to secure your interests and protection on your brand and it further prevents



or hinders someone else from using the same name, symbol, design, mark or expression as yours which therefore offers security to your brand and such brand will only be associated and identified with you.

- Registering your trademark is the way to go businesswise as it equips you with the necessary tools to take action against third parties who might be a threat to your own business.

In the event that you fail to register your trademark, it therefore follows that nothing can hinder anyone else from registering such a mark which may affect your business negatively by undermining your business since registration of trademarks protects one's products, business or services against competitors.

- Registering a trademark is the best way of branding, building reputation as well as building a business. So whenever you hear the term "trademark", think of branding and such a mark will carry some reputation behind such a brand.

If you register your trademark it will become easier for customers to locate your brand due to a lot of competition on the market since your brand will attract customers to it. This therefore shows

that trademarks promote freedom of choice for goods and services and also encourages competition in the provision of services or manufacturing of goods to the benefit of the consumer or customer.

- In short it can therefore be said that, a trademark is a means of distinguishing one's goods and services from those of competitors.

It gives one the exclusive right to use that mark or name to the exclusion of third parties. So a name will only be said to belong only to you once it is registered as a trademark and this goes a long way in protecting your brand. It therefore follows that no one will have the right to use such name as yours and also prevents third parties from registering conflicting marks.

- A registered mark makes it easier to seek relief or remedies in the event of infringement of such a right.

From the above, it can therefore be said that a trademark is important in the sense that it is the right to the exclusive use of a name, word, expression, sign, design or logo which if infringed offers one recourse

Family Law

Can a customarily married wife (unregistered customary law union) stop the husband from marrying another wife under a registered civil marriage [Chapter 5:11], commonly known as [Chapter 37]?

Locardia Karimatsenga v Morgan Richard Tsvangirai and Others HH-369-12

Pasipanodya v Muchoriwa 1997(2) ZLT 182(S)

In the Tsvangirai case one of the reasons why the civil marriage could not be stopped was because of failure to prove the existence of a customary marriage, who knows, had it been proven it could have been otherwise and such marriage could not have taken place until he had settled scores with the customarily married wife. Despite being married customarily, does such a wife have the right to stop her husband from getting married under the civil law? It would amount to a crime of bigamy if a man who is married customarily and without dissolving such a relationship marries someone else under the civil law. But what is the position of the law pertaining unregistered customary law unions, the law gives little weight to an unregistered customary union. In the Tsvangirai case, the judge dismissed the claim to

have the marriage stopped on the basis that she was traditionally married to Tsvangirai and if a customary marriage is not solemnized then it is invalid. This shows lack of protection to women in unregistered customary unions, at one end the law recognises the crime of bigamy with unregistered unions included and on the other hand invalidates such a marriage at law which at the end of the day creates two conflicting interests. In the Case of Pasipanodya v Muchoriwa, the court noted that, a marriage under an unregistered customary union can be dissolved under customary law either by giving the wife "gupuro" or before a customary law court. If that is not the case, it can be said the parties merely separated". So this can be said in the Tsvangirai case, before he could be made to marry another wife, he should have settled his dues by giving a rejection token (gupuro) to his customarily married wife and then proceed to marry someone under civil law. From this position it follows that it is difficult for a woman in an unregistered union to stop her husband from marrying someone else under a registered civil marriage.

It is advisable to men who would want to marry under

civil law, to settle their scores customarily because tables might turn and such would be a requirement to be met before proceeding with a civil marriage. To women in unregistered customary law marriages, it is advisable that you take the necessary steps to register your marriages so that you may be afforded the necessary protection by the law because as it stands there is little or none at all. An unregistered customary law union is not recognised as a marriage at law in Zimbabwe even though statistics show that most of the unions in Zimbabwe are customary by nature and no formal requirements have been met to register such unions.



DID YOU KNOW THAT? Criminal Offences prescribe?

Section 23 of the Criminal Procedure and Evidence Act [Chapter 9:07] provides for the prescription of offences.

Section 23(1) provides that, "The right of prosecution for murder shall not be barred by any lapse of time.

Section 23(2) provides that, "The right of prosecution for any offence, other than murder, whether at the public instance or at the instance of a private party, shall unless some other period is expressly provided by law, be barred by the lapse of 20 years from the time when the offence was committed.

Disclaimer

Information contained in this publication is for general informative purposes only and does not constitute our professional legal advice. Nenjy | Nyamapfene Law Practice will not accept any liability resulting from relying on this publication and neither will it accept liability for damage, prejudice or any loss whatsoever resulting from relying on this publication. Readers must not solely act on the information contained in this publication without seeking legal advice, each case is decided based on its own facts and circumstances.

4 Edmonds Avenue, Belvedere, Harare

Cell: 0772 368615 | 0783 393 481 | Tel: 04 751573 | 751590

Email: intern@nnlawpractice.co.zw | Website: <http://nnlawpractice.co.zw/>