



**NENJY || NYAMAPFENE
LAW PRACTICE**



NEWSLETTER

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Dear Reader!

We have come together once again as we continue on our journey in the belief that we grow together in our vision. I am glad to introduce to you another issue of our newsletter, the second this year and I maintain our mission to impart general knowledge on the law to the masses of Zimbabwe and beyond.



Sonia Fashi

UNILATERAL VARIATION OF EMPLOYMENT CONTRACTS

Sometimes changes occur in working terms and conditions for various reasons and those changes can result in drastic changes in working standards, and in the end can result in reduction of employees salaries/wages and or benefits. Variation upwards or downwards of contracts is usually done in the event of changed circumstances of employment or when a company is being re-organized. Can the variation of an employment contract be done by the Employer unilaterally?

Variation usually can be in the form of salaries, hours of work and duties among others. Such variation usually changes working conditions for the good or worst. Lawful variation of employment contracts is when such variation is done with both parties in agreement hence if an employer

wishes to change/ vary an employee's contract of employment he/she should fully consult with the employee explaining and discussing the reasons for the change. It is such acceptance of the changes by the employee that will make the variation lawful. The law prohibits unilateral variation hence seeking the acceptance of changed circumstances from the other party is key. Variation to employment contracts can be agreed on verbally or can be put down in writing. Putting such variation of terms in writing seems to be the way to go as this will act as evidence or proof of the variation thereof in the event either party denies being agreeable to varying the contract. Most employees are not aware that the position of the law is that contracts of employment cannot be varied by one of the parties without the consent of the other.

Variation of the terms of employment must be consensual. "Once the parties have agreed on essential terms of the contract, its terms are fixed in the sense that neither party may unilaterally vary them unless the original contract provide for variation...conversely, an employer cannot unilaterally alter the terms and conditions of a current employment contract even if the change is to the employee's advantage".
John Grogan.

It doesn't mean employees should refuse to accept terms varying a contract since at times there are factors beyond the control of either party which may warrant that such contracts of employment be varied.

FAMILY TRUSTS

Besides writing a Will trusts can also do the trick. If you want to protect your property family trusts are the way to go.

A family trust is an arrangement to protect property and other interests on the property for the benefit of family members. Trusts can be established specifically for the benefit of the members of the family. Trusts are set up to hold a family's assets. Once a trust is set up and property is transferred to that trust then legally at law that person will own no asset but such property will become trust property even though that person will still have some control and benefit from such property. These trusts protect the property from matrimonial disputes eg at divorce since property will be held in trust it therefore

follows that such property will not be subject to distribution as it is not taken as part of the matrimonial property. Trusts also protect property from creditors since legal ownership would have transferred into the name of the trust hence cannot be claimed as security for a personal debt unless such property was registered as trust property to evade legal action against such property. Put simply it protects property from personal liability. It reduces the risks of claims or prevents claims against the deceased estate. A trust shields property from lawsuits and creditors. Through trusts certain assets can be maintained within the family benefiting generations and generations of that same family. A trust also deals with barriers

associated with the administration of an estate in that it saves costs since transfer of the property to a trust is done before death hence no issue to do with the payment of Masters fees would arise in light of trust property. Trust property also has certain tax benefits associated with it.

Don't die without handling your estate as there are several ways to do so. If you don't write a Will then put your property under a family trust, the option is yours.

Protect your property, find a lawyer and register a family trust today.



Damages for Personal Injury

The world is not always a safe place. People fall prey to dangers in the roads or even at the workplace. Injuries can happen due to the negligence of third parties. "Imagine on your way from work you get hit by a car and suffer serious injuries due to an accident which was not your fault but rather due to the drivers negligence".

People are dying or getting injured, some losing amenities of life, support due to the death of breadwinners as a result of the negligence of individuals or companies. Children are becoming orphans in the process and do not know what to do in such incidences. Well there are damages at law that can be claimed in personal injury cases which are under two broad headings namely special and general damages.

Ever wondered about what you can sue for as damages in a personal injury suit, well let us give you a hint? Even professionals can also be sued eg Doctors, for professional negligence. Damages basically are classified under two broad headings namely General and Special damages. Meaning a person can claim either general or special damages or both in a personal injury suit

Are you injured and you don't know how to go about it, well the law offers relief/damages for personal injury. One can successfully sue any person or even doctors for damages for personal injury. Damages are an amount of money awarded to the person claiming relief for personal injury due to the other party's intention, negligence and or recklessness. In a claim for damages for personal injury, the Claimant must be able to prove that the other party is responsible for the incident that resulted in the injuries. The injured person can seek compensation for both general and special damages and such compensation is arrived it after taking into account various factors eg the nature and extent of the injuries, the age of the injured party, the general health of the claimant prior to the incident as well as the severity of the injuries among other factors. These damages are claimed by and awarded to the person who would have suffered injuries due to another party's negligence or recklessness. Sometimes these damages can also be claimed on behalf of the injured person eg by the spouse, parents and or children.

What are Special Damages?

Special damages are compensation for money you have had to pay or expenses incurred as a result of the injury. To make

a successful claim of special damages one must prove such damages eg by furnishing receipts and these damages should not be made on mere assumptions but rather tangible proof should be furnished thereof to substantiate the actual expenses incurred and are not for the court to make assumptions. These damages include money spend on medication or prescription fees, travelling, property damage and loss of wages among others.

What are General Damages?

General Damages are non-monetary losses resulting from the accident. These are damages which flow from the wrong. Under these damages one can claim damages for pain and suffering, loss of limbs, loss of amenities of life, disfigurement, shortened life expectancy and sometimes for loss of life. These damages however are not easy to prove or quantify, since they flow from the injury and do not have definite amounts of money they attract but are awarded as compensation after weighing the surrounding circumstances and in the end coming up with an amount of money seen just and equitable to be awarded to the Claimant. The law is there to protect people hence people should make use of it when the real need arises.

Judicial Management

The law allows dual citizenship for children. Children are conferred with rights of dual citizenship which ceases to exist upon acquiring 18 years of age/ majority age. The Citizenship of Zimbabwe Act provides that, " a citizen of Zimbabwe who, when he becomes of full age(attains 18 years of age), is also a citizenship of a foreign country shall cease to be a citizen of Zimbabwe one year after he attains his majority(18 years) unless, before the expiry of that period, he has effectively renounced his foreign citizenship in accordance with the law of that foreign country and has made a declaration confirming such renunciation in the form and manner prescribed".

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