



Remedies Available to a Director Whose Appointment is Wrongly Terminated in Nigeria: A Comprehensive Guide with Case Law References

Description

In Nigeria, the wrongful termination of a director's appointment can have serious financial, professional, and reputational implications.

Whether you are an executive director, non-executive director, or an independent director, the wrongful termination of your appointment can lead to legal battles.

Thankfully, there are legal remedies available to address such situations, and this article will explore those remedies with backing from Nigerian case law.

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1. Understanding Wrongful Termination of a Director's Appointment in Nigeria

A director's position in a company is regulated by several legal principles, including the **Companies and Allied Matters Act 2020 (CAMA)**, contractual agreements, and sometimes common law rules.

Directors are appointed to ensure the smooth management of a company, and their tenure may be specified by contract or statute.

However, when a director's appointment is wrongfully terminated, it can be challenged through legal means.

Wrongful termination refers to a scenario where the termination violates statutory provisions, company bylaws, the contract of employment, or is executed in bad faith.

For directors, wrongful termination can result from unfair practices such as removal without due process, lack of proper notice, or violation of their contract of service.

2. Legal Framework Governing Director's Appointment and Termination

The **Companies and Allied Matters Act 2020 (CAMA)** is the primary legislation that regulates the appointment, duties, and termination of directors in Nigeria.

Under this Act, a company has the authority to remove a director by **ordinary resolution**, but this process must follow specific procedures to ensure fairness.

Section 288 of CAMA 2020 provides the legal framework for the removal of directors. According to this section, shareholders can remove a director by passing an ordinary resolution, subject to giving **special notice** of the intention to propose the resolution.

However, directors can also be removed through other means, including termination by the board or expiration of their tenure. When this process is not followed, it gives rise to grounds for legal action.

Key Legal Provisions:

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- **CAMA 2020, Section 288:** Governs the removal of directors and stipulates that special notice must be given, and the director must be given a right to defend themselves.
 - **Employment Contract:** The terms of the employment or service contract, if any, may outline specific procedures for termination.
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3. Grounds for Wrongful Termination of a Director

Wrongful termination of a director can occur due to several factors, including:

1. **Breach of Employment Contract:** If the termination does not align with the terms of the director's service contract, it can be classified as wrongful. For example, if the contract stipulates a three-month notice period, but the director is dismissed without such notice, this may be a breach.
 2. **Violation of Statutory Provisions:** CAMA 2020 sets out specific procedures for removing a director. Failure to comply with these procedures could render the termination wrongful. This includes not giving proper notice or failing to hold a meeting of shareholders.
 3. **Bad Faith or Malice:** If the termination was carried out in bad faith, perhaps to remove a director because of personal differences or other non-business-related reasons, the court may deem it wrongful.
 4. **Lack of Due Process:** Directors are entitled to defend themselves before termination. If a director is not given the opportunity to make their case, it may result in wrongful termination.
 5. **Discriminatory Termination:** Termination based on discrimination or other unethical reasons can give rise to wrongful termination claims.
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4. Remedies Available to a Director Whose Appointment is Wrongly Terminated

A director whose appointment is wrongfully terminated in Nigeria has several legal remedies available. These remedies are intended to compensate the director or provide some form of restitution. They include:

1. Damages for Breach of Contract

When a director's termination is in breach of their service contract, they may be entitled to damages for **wrongful dismissal**. The measure of damages will usually be the salary or remuneration that the director would have earned if the proper notice or contractual term had been adhered to. In **Shell Petroleum Development Co. Ltd v. Olanrewaju (2008) 18 NWLR (Pt. 1118) 1**, the Supreme Court reiterated that wrongful termination of employment entitled the affected party to damages in lieu of notice.

2. Reinstatement

In rare circumstances, the courts may order the reinstatement of a director. This is more common where the company is a public entity or where the termination was evidently against the principles of **natural justice**. In **FMC v. Faith Ent. Ltd (1990) 6 NWLR (Pt. 570) 17**, the Court of Appeal held that the wrongful termination of the services of an employee can be reversed by reinstatement if the court finds it equitable to do so.

3. Injunction to Restrain Termination

A director may apply for an **injunction** to restrain the company from proceeding with their wrongful termination. This remedy is typically sought before the termination is finalised. The court may grant such an injunction if it finds that the termination violates the company's procedures or the director's contractual rights. In **Ogunniyi v. Hon. Minister of FCT & Anor (2014) 18 NWLR (Pt. 1422) 25**, the Court granted an injunction where the termination was found to be carried out in bad faith.

4. Compensation for Loss of Office

CAMA 2020 allows a company to compensate a director for loss of office. Where a director is wrongfully terminated, they may be entitled to such compensation as well as any other payment that would have accrued to them had they remained in office.

5. Declaratory Judgment

A director may seek a **declaratory judgment** affirming that their termination was wrongful and illegal. This form of remedy does not result in monetary compensation but serves to clear the director's name and reputation. For example, in **Nigerian Bottling Co.**

Plc v. Lawal (2021) 14 NWLR (Pt. 1797) 1, the Court issued a declaratory judgment in favour of the employee whose termination was found to be wrongful.

6. Shareholder Remedies

If the wrongful termination of a director was the result of unfair practices by shareholders, the director may have recourse under **Section 311 of CAMA**, which allows aggrieved parties to bring an action for **unfair prejudice**. This is especially useful where the termination was orchestrated by a majority shareholder acting in bad faith.

5. Case Law on Wrongful Termination of Directors in Nigeria

Nigerian courts have had ample opportunity to deliberate on the issue of wrongful termination of directors. Below are some decided cases that provide insight into how the courts address such matters:

Shell Petroleum Development Co. Ltd v. Olanrewaju (2008) 18 NWLR (Pt. 1118) 1

In this case, the Supreme Court of Nigeria addressed the issue of damages for wrongful termination. The Court held that when an employee or director is wrongfully terminated, the primary remedy is damages equivalent to what they would have earned during the notice period.

FMC v. Faith Ent. Ltd (1990) 6 NWLR (Pt. 570) 17

The Court of Appeal, in this case, emphasised the importance of following due process in the termination of employees and directors. The Court held that where a director is wrongfully terminated without following due process, they may be entitled to reinstatement.

Nigerian Bottling Co. Plc v. Lawal (2021) 14 NWLR (Pt. 1797) 1

In this case, the Court issued a declaratory judgment that affirmed the wrongful termination of the employee. The judgment cleared the employee's name, although no

monetary compensation was awarded.

Ogunniyi v. Hon. Minister of FCT & Anor (2014) 18 NWLR (Pt. 1422) 25

In this case, the court granted an injunction preventing the wrongful termination of the plaintiff. The court emphasised that injunctions are an appropriate remedy where termination is imminent and the procedures are not being followed.

6. Frequently Asked Questions (FAQs)

What is wrongful termination of a director's appointment?

Wrongful termination refers to a situation where a director's appointment is terminated in breach of statutory provisions, the service contract, or without due process.

What remedies are available to a wrongfully terminated director?

The main remedies include damages for breach of contract, reinstatement, injunctions to prevent termination, and compensation for loss of office.

Can a director be reinstated after wrongful termination?

Yes, reinstatement is possible in certain circumstances, especially where the termination is illegal or against principles of natural justice.

How do Nigerian courts handle wrongful termination cases?

Nigerian courts often award damages, issue declaratory judgments, or grant injunctions in wrongful termination cases. Case law shows that the courts prioritise fairness and adherence to due process.

7. Conclusion

The wrongful termination of a director's appointment in Nigeria is not only a breach of legal duty but also a disruption to the corporate governance structure.

As discussed, directors have several remedies available, ranging from damages to reinstatement. It is essential for companies to follow due process as laid out in CAMA 2020 and other legal frameworks to avoid unnecessary litigation.

With the backing of several decided cases, directors can confidently challenge wrongful terminations and seek appropriate redress.

By understanding the legal remedies available and the procedures governing termination, directors can protect their rights and ensure justice is served.

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