

THE FORMAT FOR RETRENCHMENT CONSULTATIONS

The principle of Fair Labour Practice is enshrined in the Constitution of the Republic of South Africa, and entrenched in the Labour Relations Act ('LRA'). When it comes to retrenchment, the law prescribes that consultation be conducted between the parties in a meaningful manner. This is not based solely for the sake of procedural fairness, but also as part of establishing whether substantive grounds for dismissal are present.

In cases of retrenchment, the only fair reason for dismissal is for operational requirements either for financial, technological or structural reasons.

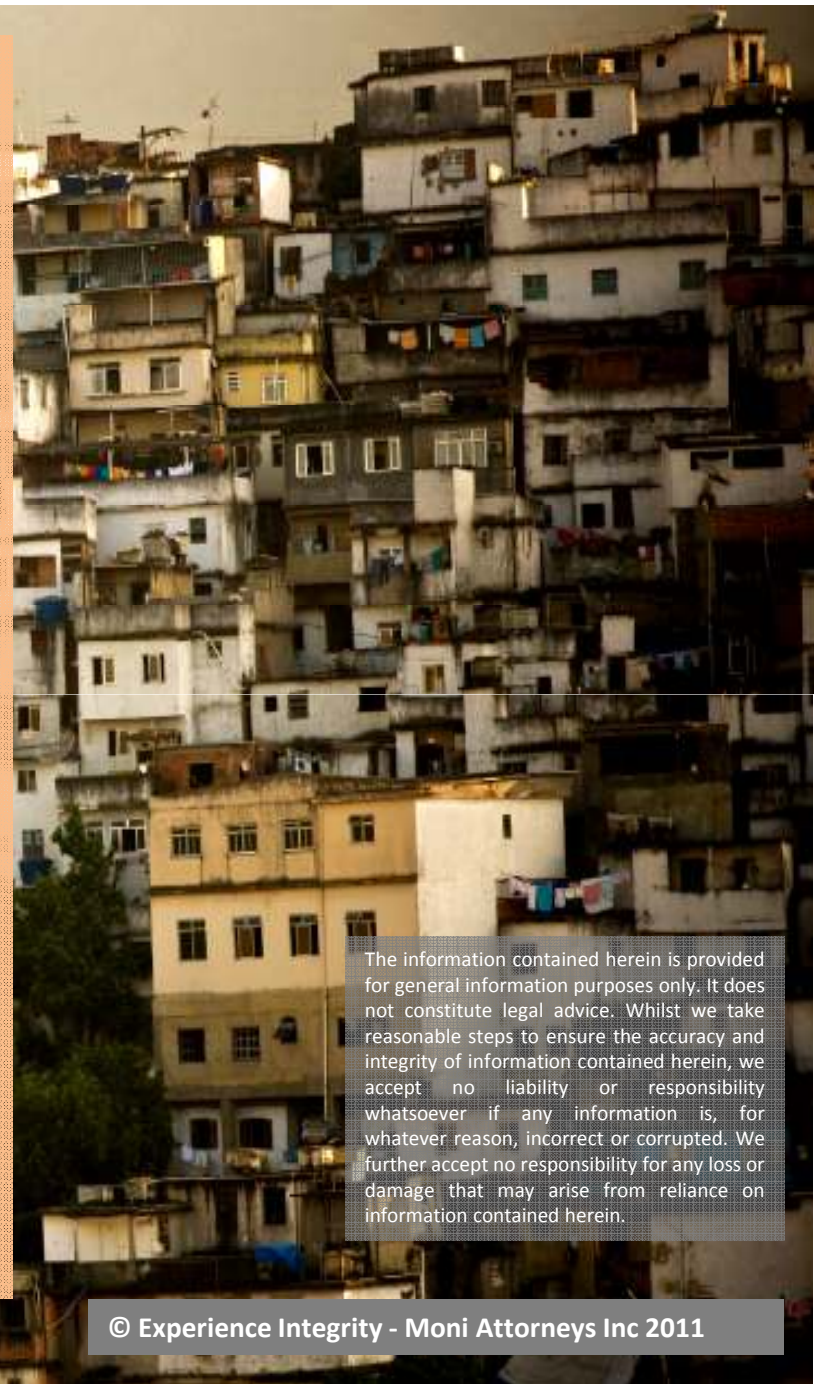
In the matter of *Motau v the Banking Association of South Africa* the applicant was retrenched because her job became redundant. It was contended by the applicant that the redundancy did not amount to a sufficient reason for retrenchment, and also, that the procedure followed was a *fait accompli*.

In an attempt to abide by the LRA the respondent initiated consultations face to face and when relations broke down in writing with the applicant's designated representative.

It was apparent to the Commissioner that the discussions which took place during the consultations between the applicant and the respondent were difficult. However, rightly pointed out that s189 of the LRA does not demand otherwise. In coming to a decision, the Commissioner found that such consultations may take any form as long as they are meaningful.

In the present matter, the discussions which took place were deemed 'meaningful' because communication did take place regarding the possible retrenchment, in writing. Moreover, because there was no suitable option available for the applicant, it was held that retrenchment of the applicant was an inevitable consequence.

Consequently, the CCMA held the dismissal to be both procedurally and substantively fair.



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