

**DISMISSALS BASED ON OPERATIONAL REQUIREMENTS IN THE
WORKPLACE**

By

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DECLARATION BY STUDENT

I, **Mahodiela Rodney Ramafalo**, declare that this mini-dissertation submitted to the University of Limpopo (Turffloop Campus) for the degree of Masters of Laws (LLM) in Labour Law has not been previously submitted by me for a degree at this university or any other university, that is my own work and in design and execution all material contained herein has been duly acknowledged.

Signed-----

Date-----

MAHODIELA RODNEY RAMAFALO

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ABSTRACT

The coming into power of the democratic government played an important role in transforming South African labour law system. After the Labour Relations Act 66 of 1995 (LRA) was implemented on 11 November 1996, the old Labour Relations Act of 1956 was repealed. The law on retrenchment forms an integral part of law of dismissals. The South African labour market has in the past years been characterized by restructuring and consequently retrenchment of employees. In most cases, employer's decisions to retrench were challenged by the employees and unions in courts. Section 189 of the LRA stipulates procedures to be followed by an employer when contemplating dismissal of one or more employees for reasons based on operational requirements. The employer does not only have to follow the procedures set out in section 189 to render dismissals for operational reasons fair, but there must also be a valid reason to dismiss. The courts have always not been willing to second-guess the employer's decision to retrench provided that the decision is made in good faith.

DECLARATION BY SUPERVISOR

I, **Adv. Lufuno Tokyo Nevondwe**, hereby declare that this mini-dissertation by **Mahodiela Rodney Ramafalo** for the degree of Masters of Laws (LLM) in Labour Law be accepted for examination.

Signed-----

Date-----

Adv. Lufuno Tokyo Nevondwe

DEDICATION

This work is dedicated to my family, father Thabo Johanness Ramafalo, mother Mokgadi Elizabeth Ramafalo, my sister Reneilwe Polvia Ramafalo, my niece Reabetswe Ramafalo and both my sons Thabo Shoba and Bonang Tshireletso Ramafalo and his mother Dieketseng Marumo. They all have been my key allies and compatriots and have motivated me to have courage to continue and work hard in this mini-dissertation. They provided me with immeasurable physical, moral and spiritual support and without which the possibility of completion of this work would have been far too remote.

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LIST OF ABBREVIATIONS

AJ Acting Judge

AD Appellate Division

AJP Acting Judge President

BCEA Basic Condition of Employment Act 75 of 1997

BCLR Butterworths Constitutional Law Reports

BLLR Butterworths Labour Law Reports

CCMA Commission for Conciliation, Mediation and Arbitration

CWIU Chemical Workers Industrial Union

DDPS Dismissal and Disciplinary Procedures

EAT Employment Appeals Tribunal

EEA Employment Equity Act 55 of 1998

ERA Employment Relations Act, 1996

ETSOS Economic, Technological, Structural or Similar reasons in the business of the employer

FAWU	Food and Allied Workers Union
GATT	General Agreement on Tariffs and Trade
IC	Industrial Court
ILJ	Industrial Law Journal
ILO	International Labour Organization
JP	Judge President
LAC	Labour Appeal Court
LC	Labour Court
LRA	Labour Relations Act 28 of 1956
LRA	Labour Relations Act 66 of 1995
LIFO	Last In, First Out
NUM	National Union of Mine Workers
NUMSA	National Union of Metalworkers of South Africa
SCA	Supreme Court of Appeal

SACTWU	South African Clothing & Textile Workers' Union
SALJ	South African Law Journal
SALR	South African Law Report
TULRCA	Trade Union and Labour Relations Consolidation Act, 1995
TULRA	Trade Union and Labour Relations Act of 1992
TUPE	Transfer of Undertaking and Protection of Employment
TUR	Transfer of Undertaking Regulations of 2006
UPUSA	United People's Union of South Africa
WTO	World Trade Organization

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