

UNDERSTANDING RETRENCHMENT: BALANCING ECONOMIC NECESSITY AND WORKERS' RIGHTS



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Retrenchment is a significant cost-cutting measure typically triggered by economic downturns, business restructuring, mergers, acquisitions, or technological advancements. As seen during the COVID-19 pandemic, many companies, under severe financial strain, resorted to retrenching employees to remain operational—often with far-reaching consequences for affected workers and their dependents. While retrenchment is legally recognized, it must comply with stringent labor laws to prevent unfair termination.

Looking ahead, similar or even more complex scenarios—such as future pandemics, climate-related disruptions, or rapid digital transformation—may once again compel employers to consider retrenchment. This underscores the importance of preparedness, legal compliance, and fair negotiation practices.

The case of **Nas Dar Airco Co. Ltd v. Emmanuel Igonda & Another** illustrates the legal and ethical need to strike a balance between economic necessity and the protection of workers' rights. Mishandled retrenchment processes not only jeopardize livelihoods but also expose employers to substantial legal risks. It is, therefore, critical for both employers and employees to fully understand their rights and obligations when navigating such transitions.



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CIRCUMSTANCES FOR RETRENCHMENT.

Navigating the guidelines that the employer has to observe in the fair retrenchment process invites keen scrutiny of **Section 38 of The Employment and Labor Relations Act [C.A.P 366 R.E 2019]**, read together with **Rule 23 of the Employment and Labor Relations (Code of Good Practice)**.

Retrenchment is driven by **operational necessities**, leaving employers with no viable alternative but to reduce their workforce. **Rule 23(2) of the Employment and Labor Relations (Code of Good Practice)**, reinforced by the **Court of Appeal decision in *Brian Celestine & 19 Others v. The Salvation Army Tanzania Territory***, provides a clear framework for determining a **fair reason** for operational retrenchment. These reasons fall into three primary categories:

1. **Economic Necessity** – When a business faces financial strain, cost-cutting measures become imperative. Retrenchment may be the last resort to ensure the enterprise remains viable, allowing it to streamline expenses and sustain its core operations.
2. **Technological Advancements** – The introduction of new technology can fundamentally alter workplace dynamics. In some cases, automation or digitalization renders certain roles redundant, while in others, businesses may require employees with specialized skills to adapt to evolving technological demands.
3. **Business Restructuring** – Mergers, acquisitions, or shifts in business strategy often necessitate structural changes. Whether it's consolidating departments, modifying operational models, or redefining company objectives, these transformations may lead to workforce reductions.

Note; The court shall scrutinize such circumstances and observe if there were possible alternatives instead of retrenchment and was a result of genuine reasons.

PROCEDURAL REQUIREMENTS FOR RETRENCHMENT.

Employers must fulfill **procedural** and **substantive** obligations when conducting retrenchment to avoid unfair termination. Section 38 of the Employment and Labor Relations Act outlines the following key requirements:

1. **Notice of Intention to Retrench:** The employer must give notice of the intention to retrench to allow employees or their trade unions to make representations during the consultative meeting. Although the Act does not specify the time frame for the notice, in ***Nas Dar Airco Co. Ltd v. Emmanuel Igonda & Another***, the High Court of Tanzania ruled that a two-day notice posted on a notice board was inadequate.

2. **Consultative Meeting:** During this meeting, the employer is required to disclose all relevant information regarding the retrenchment. This includes: **The reasons for retrenchment, any measures taken to avoid or minimize retrenchment, the method for selecting employees to be retrenched, the timing of retrenchment, and Details of severance pay.** If an employee fails to attend the meeting, it will be regarded as a waiver of their right to participate. **Trade Union Representation:** For employees represented by a registered trade union, the employer must notify the union accordingly. The union is expected to attend the meeting and assist the employees in collective bargaining.

3. **Arbitration and mediation.** If the consultative meeting fails to reach an agreement, the matter proceeds to **mediation**. If unresolved, it moves to **arbitration**. If the employee remains dissatisfied, they may seek **revision in the High Court**, while the employer may proceed with retrenchment. However, retrenchment **cannot take effect** while the matter is still in mediation or arbitration.

RIGHTS AND BENEFITS OF THE EMPLOYEE.

As previously highlighted, the retrenchment process not only affects the employee, it also extends to his dependents. The employee has to be aware of what rights and benefits are provided under the law.

1. The employee has the right to be notified and given reasonable time to prepare for a consultative meeting, and the right to be represented in safeguarding their interest.
2. The employee has a right to be made aware of the reasons that constitute the retrenchment.
3. The employee has the right to receive the following remuneration
 - severance pay, to an employee who has completed 12 months of continuous service with the employer, which is calculated by evaluating at least 7 days' wage multiplied by the number of years of service to a maximum of 10 years, it has to be duly noted that severance pay is not paid subject to termination resulting to misconduct, retirement age, and an employee who is terminated based on operational reasons but unreasonably refuses an alternative job offer.
 - Remuneration of work done before termination (outstanding salaries).
 - Annual leave pay due to an employee who was not paid, and any other benefits provided in the contract that are due and not yet paid.
 - Reparation costs, if the employee was transferred from another area other than the place of recruitment.
4. The employee is entitled to be provided with a certificate of service upon termination of employment.

PROTECTION AGAINST UNFAIR TERMINATION FROM RETRENCHMENT CLAIMS.

Their situation, where **business restructuring** can be misused to effect unfair retrenchment, is when an employer **falsely claims a departmental merger or operational shift** to target specific employees for termination. **For example**, a company may announce restructuring to improve efficiency and eliminate redundancies, but in reality, the changes are designed to **dismiss employees who are vocal about labor rights, union activities, or those deemed "unfavorable" by management.** If the positions are later refilled with new employees under different job titles but with similar responsibilities, this would indicate that the restructuring was merely a pretext for unfair retrenchment.

Employees can be protected from unfair termination disguised as retrenchment by ensuring strict adherence to the procedural and substantive requirements outlined in Section 38 of the Employment and Labor Relations Act and Rule 23 of the Code of Good Practice. Employers must provide proper notice, conduct genuine consultative meetings, explore alternative measures to minimize job losses, and ensure fair selection criteria. Courts and labor dispute mechanisms play a crucial role in scrutinizing retrenchment claims to prevent misuse. Additionally, employees should be aware of their rights, seek trade union representation, and challenge retrenchment decisions that do not comply with legal standards through mediation, arbitration, or judicial review.

Note: The majority of employees fail to adhere to statutory time limits; the law requires that an employee file a complaint arising from unfair termination within 30 days, and failure to do so results in prolonged litigation.

Emergency Contracts under the Labour (Amendments) Act, 2025

The Labour (Amendments) Act, 2025 has introduced a new provision—Section 16A—into the Employment and Labour Relations Act (Cap. 366). This section provides that, in the event of an outbreak of infectious diseases or any other emergencies that may threaten employee safety or disrupt normal workplace operations, employers and employees are required to mutually agree on the most appropriate measures to address the situation in the best interests of both parties. Where such consensus cannot be reached, the matter may be referred to mediation. The significance of this amendment lies in its progressive approach to managing employment relationships during extraordinary circumstances. Rather than resorting to retrenchment, the law encourages the use of "emergency contracts" as a flexible tool to adapt employment terms in response to crises, thereby promoting job security and operational continuity.

In conclusion, retrenchment, while necessary, requires both employers and employees to understand their rights and obligations. Employers must follow legal procedures to ensure fairness, while employees must be aware of their entitlements. A balanced approach ensures that businesses can navigate tough times without unjustly harming their workforce.

About SVTL Advisory.

At SVTL Advisory, we are committed to providing comprehensive legal and strategic advisory services to businesses, investors, and institutions navigating Tanzania's regulatory landscape. Our expertise extends across various sectors, including employment and labor law, corporate compliance, cross-border trade, and investment regulations.

With the latest amendments to labor and employment laws, we continue to guide our clients through evolving legal frameworks, ensuring compliance. Additionally, SVTL Advisory offers specialized Human Resources (HR) services, assisting organizations in structuring employment contracts, managing workplace disputes, and aligning HR policies with Tanzania's labor laws. Whether you require legal guidance on workforce management, contract structuring, or dispute resolution, **SVTL Advisory stands as your trusted partner**.



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