Case Review | **November 24, 2022**

What does the law expect of an employer when terminating on medical grounds?

Introduction

For all its achievements humanity is fragile, so it is not uncommon for employees to suffer illness. Some of these ailments may have far reaching consequences.

In extreme circumstances, diseases or medical procedures may lead to disability. In such cases, how should an employer deal with an employee who gets a disability in the course of their employment? Can an employer terminate such employee on medical grounds? Does termination on account of a person's disability amount to discrimination?

These are the exact questions the Supreme Court dealt with.[1] We highlight the key lessons and definitive legal positions on these issues below.

Dismissal on medical grounds is not the same as dismissal on grounds of physical incapacity

The Court categorically determined that the Employment Act does not provide for dismissal of an employee on medical grounds. What the Act actually provides for is termination on grounds of physical incapacity. As such an employer must conduct medical assessments to determine whether an employee is incapable of performing their duties.

This means termination on the ground of physical incapacity must be preceded by a medical assessment.

Employer must make reasonable accommodation

The Court held an Employer has a duty to accommodate an employee with an established the employee physical incapacity. The same standard applies in cases of absence on account of sickness or injury.

The Employment and Labour Relations Court (**ELRC**) has separately held that reasonable accommodation in cases of sickness and injury goes beyond granting the employee sick leave and allowing them to exhaust it.

The Supreme Court's decision further anchors this standard and specifically in cases of incapacity. An employer must show that accommodating the needs of an employee with physical incapacity would cause it undue hardship.

It is important that employers make reasonable accommodation. Failing to do so also, can lead to a claim of discrimination. The Court in this instance established the employer failed to show that employee's physical incapacity made them incapable of performing work duties. The burden was on the employer to show that the employee was unfit or that the accommodations needed would be unduly burdensome.

Requirement to conduct a hearing

In order for termination on medial grounds to be fair the employee must be given a hearing that complies with the requirements of the Act. Failure to convene the hearing means any dismissal on grounds of incapacity or an employee being too ill to work, can be deemed unfair and unlawful by the ELRC.

In conclusion, an employer considering termination for medical reasons bears the burden of proving the employee is medically unfit to continue serving.

[1] Gichuru v Package Insurance Brokers Ltd [2021] KESC 12 (KLR)