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LEGAL ALERT



Mental Health in Employment: Fairness Beyond
Procedure



Mental Health in Employment: Fairness Beyond Procedure

Introduction

Mental health in the workplace is no longer a peripheral issue in employment law. Courts are increasingly examining how employers respond to employees facing psychological challenges, particularly where disciplinary action is involved. A recent decision of the Employment and Labour Relations Court (ELRC) highlights a key principle: compliance with procedure alone is not enough, employers must ensure substantive fairness where mental health is concerned.

In AWW (Suing as Next Friend and Mother of GWW) v Central Bank of Kenya [2024] KEELRC 13585 (KLR), the Court considered whether an employer acted lawfully in terminating an employee with a known mental illness following a disciplinary process. The decision underscores the growing expectation that employers must go beyond formal compliance and actively accommodate vulnerable employees.

Background of the Case

The claimant filed the suit on behalf of her daughter, who had been employed by the respondent since 2009. During her employment, the employee developed mental health conditions, including bipolar mood disorder and schizoaffective disorder. These conditions were documented and known to the employer.

Over time, the employee began experiencing workplace challenges, particularly absenteeism linked to her condition. The employer initiated disciplinary proceedings, issued notices to show cause and

convened a disciplinary hearing. In 2020, her employment was terminated on grounds of gross misconduct.

The claimant argued that the termination was unfair and discriminatory, stating that the employer failed to consider the employee's mental condition, did not provide reasonable accommodation and subjected her to a process she could not meaningfully participate in.

What the Law Provides on Fair Termination and Disability

Kenyan law requires both procedural and substantive fairness in termination. Section 41 of the Employment Act mandates that an employee be given a fair hearing, including an opportunity to respond to allegations.

Additionally, Article 27 of the Constitution guarantees equality and freedom from discrimination, while section 5 of the Employment Act prohibits discrimination in employment.

Together, these provisions impose a duty on employers not only to follow due process but also to take into account the specific circumstances of employees, particularly where disability is involved.

What Happened in Practice

The employer maintained that it had supported the employee through medical care and counselling and that it followed due process in terminating her employment. It argued that the employee had moments of lucidity and was therefore capable of participating in the disciplinary process.



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