

Employment Law and Dispute Resolution

ALERT | 28 October 2024



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The legitimacy of soft skills evaluation as grounds for termination of employment

On 30 September 2024, the Employment and Labour Relations Court rendered a judgment in *Daniel Kang'ethe Mbugua v Smart Applications International Limited* (Employment and Labour Relations Courts Cause No. 359 of 2019), affirming that the claimant's termination of employment was fair, based on concerns regarding his soft skills. This article discusses the judgment, while offering practical guidance to employers to ensure that their evaluation processes align with legal requirements and best practices.

Background of the case

In the matter, the claimant, serving as the respondent's Director of Technology, alleged that his termination was unfair, asserting that the process lacked transparency and failed to follow the company's employee handbook provisions by subjecting him to a 360-degree evaluation, a methodology which he alleged was not provided for in his employment contract. However, in defence of its decision, the company asserted that the claimant's performance review identified issues related to his soft skills, specifically his inability to "gel" with his team, which negatively impacted productivity, particularly of staff members working under him.

The court, upon evaluating the evidence presented, dismissed the claimant's suit, agreeing with the respondent that the claimant's soft skills deficiencies constituted a valid ground for termination.

Soft skills: A critical component of workplace success

Soft skills, which include interpersonal abilities, communication, leadership, teamwork, and emotional intelligence, are essential for fostering a productive and collaborative work environment. In this case, the claimant served in a leadership role that required not only technical expertise, but also the ability to lead and manage a team effectively. The court found that the claimant's deficiencies in soft skills, specifically his inability to foster good relationships with his team, were a legitimate reason for termination, even though he met the technical requirements of his role. The court pointed out that the claimant's lack of soft skills was alluded to by his own witnesses during the disciplinary hearing, confirming that the respondent had genuine grounds to believe the claimant's soft skills were problematic.

This judgment reflects the increasing importance of soft skills in today's workplace, particularly for those in leadership positions. While technical competence is essential, leadership roles demand the ability to engage with and motivate others, resolve conflicts, and communicate effectively. Consequently, the claimant's failure to "gel" with his subordinates created friction that negatively impacted team dynamics and productivity. The court's decision therefore underscores that poor soft skills can be just as damaging as poor technical performance and can form a valid ground for termination.

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Evaluation process: Key lessons for employers

While the court upheld the termination as fair, this case also highlights key areas where employers should be diligent in structuring their evaluation processes to avoid disputes and ensure fairness.

Clear performance metrics

One of the main issues raised by the claimant was that his termination was based on a 360-degree evaluation process that was not explicitly outlined in his employment contract or the company's handbook. While the court found that the employer's use of this method was appropriate, it serves as a reminder to employers to ensure that their evaluation criteria, for both technical and soft skills, are clearly defined in employment contracts, job descriptions and company policies.

Employers should avoid ambiguous or subjective evaluation methods that could be perceived as arbitrary. By clearly outlining the expected soft skills for each role and linking them to measurable outcomes (such as team performance, feedback from peers, and leadership assessments), employers can ensure transparency and provide employees with clear expectations.

Objective and consistent evaluation methods

Soft skills, by their nature, are often more subjective than technical skills, making them harder to measure. To mitigate the risk of unfair evaluations, employers should establish objective criteria for assessing soft skills. This could involve:

- Standardised performance review forms that include specific metrics for soft skills (e.g. communication effectiveness, conflict resolution, leadership).
- Multi-source feedback systems (e.g. 360-degree reviews) that involve input from various stakeholders, such as supervisors, peers and subordinates, to ensure a balanced view of the employee's abilities.
- Regular performance reviews that provide employees with ongoing feedback, allowing them to improve their soft skills over time, rather than facing unexpected termination.

Documenting performance issues

One of the reasons the respondent's case was successful was the detailed record of the claimant's performance issues, particularly regarding his soft skills. The company was able to provide evidence that the claimant had been informed of his shortcomings and given an opportunity to improve. This level of documentation was crucial in demonstrating that the termination was not arbitrary but based on a thorough and fair evaluation process.

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Employers should ensure that performance reviews are well documented, including specific examples of how an employee's soft skills (or lack thereof) are affecting the workplace. These records should outline any steps taken to help the employee improve and any warnings issued prior to termination. By maintaining a detailed paper trail, employers can protect themselves from claims of unfair dismissal.

Training and development opportunities

Before resorting to termination, employers should consider whether they have provided sufficient training and development opportunities for employees to improve their soft skills. In leadership roles, where soft skills are critical, offering coaching, workshops, or mentorship can be a proactive way to address deficiencies. This not only demonstrates a commitment to the employee's growth but also strengthens the employer's case should termination become necessary.

Soft skills and the law: A balanced approach

The court's decision highlights the legal acceptance of soft skills as a legitimate ground for termination, particularly in leadership and managerial roles. However, employers must approach this issue with care. While soft skills are important, their subjective nature makes it essential for employers to ensure that they are evaluated fairly and consistently, with clear criteria and documented feedback.

Employers should balance the need to assess soft skills with the requirement for procedural fairness as set out in section 41 of the Employment Act, 2007. This includes providing employees with an opportunity to understand the issues, defend themselves, and improve before termination is considered. When handled appropriately, the evaluation of soft skills can be a valid and defensible basis for making employment decisions.

Conclusion

The judgment affirms that poor soft skills can be a legitimate ground for termination, especially in leadership roles. However, employers must ensure that their performance evaluation processes are transparent, objective and documented. By setting clear expectations for both technical and soft skills, providing regular feedback, and offering development opportunities, employers can create a fair and constructive evaluation environment that supports both individual and organisational success.

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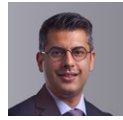
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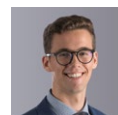
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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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