



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 2409 OF 2016**

**ISHMAEL LUKOYE.....CLAIMANT**

**v**

**BLUE AMOUR SECURITY COMPANY.....RESPONDENT**

**JUDGMENT**

1. According to an affidavit of service filed in Court on 16 October 2017, a supervisor called Wachira acknowledged service of *Notice of Summons* and *Memorandum of Claim* on 4 May 2016 on behalf of Blue Amour Security Company Ltd (Respondent).
2. Despite the service, the Respondent did not enter Appearance and/or file a Response, and the Court directed that the Cause proceeds to formal proof.
3. The Cause was heard on 10 March 2020.
4. Ishmael Lukoye (Claimant) testified under oath and also adopted the filed witness statement. The Claimant's submissions were only filed on 27 May 2020 (should have been filed by 31 March 2020).
5. The Court has considered the pleadings, evidence and submissions.

**Unfair termination of employment**

6. For a termination of employment to pass the fairness test as envisaged by sections 35(1), 41, 43 and 45 of the Employment Act, 2007, there should be *written notice of termination of employment*, a disciplinary hearing and proof of the validity and fairness of the reasons leading to the decision to terminate.
7. The Claimant's testimony that he was a security guard and that the Respondent's Operations Manager verbally instructed him to remain at home after a robbery at a site he was guarding, and later advised him that he had been dismissed remained un rebutted.
8. With no evidence of written notice or a hearing as contemplated in law, or that there were valid and fair reasons for the termination of the Claimant's employment, the Court finds that the Claimant has proved unfair termination of employment.

**Compensation and salary in lieu of notice**

9. The Claimant served the Respondent for about 4 years and in consideration of the length of service, the Court is of the view that the equivalent of 4 months' gross salary as compensation would be appropriate.
10. The Court also allows the equivalent of 1-month salary in lieu of notice.

**Breach of contract/statute**

**Underpayments**

11. The Claimant contended that he was paid Kshs 7,000/- monthly, below the minimum prescribed and gazetted wage from 1 June 2012 to 1 April 2015. He computed the total underpayments as Kshs 146,855/-.

