



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 2295 OF 2014

PATRICK ASUMA.....CLAIMANT

VERSUS

ARM CEMENT LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. The claimant filed this suit against the respondent for unfair dismissal from employment of 10 months as Security Guard. He therefore prayed for the following reliefs:-

- i. One month salary in lieu of notice = Kshs.8,100.00
- ii. Service for the years worked calculated as Kshs.8,100.00
- iii. Damages for wrongful/unfair termination (12,000 x 12) = Kshs.144,000
- iv. In the alternative be reinstated to his position and be paid the salary he could have earned in the months he has been off duty if it were not for the termination
- v. Cost of the suit.
- vi. Any other relief this Honourable Court may deem fit to award under the circumstances.

2. The respondent however, denied the alleged unfair dismissal and averred that the claimant was fairly dismissed for a valid reason and after being accorded a chance to defend himself. She therefore prayed for the suit to be dismissed with costs.

3. The suit was heard on 18.10.2018 when the claimant testified as Cw1 but the respondent never attended the hearing despite her lawyer being served with a Hearing Notice by the Court. After the hearing, only the claimant filed written submission, which I have considered herein.

Claimant's Case

4. Cw1 testified that he was employed by the respondent as a Security Guard on 11.10.2013 earning Kshs.12,000 gross pay per month. On 16.8.2014, he reported to work at respondents Cement plant and took over from a supervisor, Mr. Wellington Kasimiri at 9.30 p.m, after walking round the station and signing the O.B. to confirm everything was in order. In the morning, he handed over to Mr. Mulwa Kitheka and Mr. Philip Lang'at (both supervisors of shift 1) at 5.30 a.m after inspecting the premises and confirmed that all was okay by signing the O.B. Cw1, however, stated that it was not normal for two guards to take over duty from him as it happened on that day.

5. Cw1 further testified that, on 18.8.2014, he reported to work and took over from Mr. Kasimir as usual but after working for 6 hours he was informed by his colleague, Mr. Thomas Penda that some cables had been stolen from the company store. On 20.8.2014, he was suspended for 7 days but when he reported back on 27.8.2014 he was told that investigations were not yet complete. However, on 28.8.2014, he received a call from the office telling him to go for his dismissal letter, which he did.

6. Cw1 further testified that he was never served with any show cause letter or accorded any disciplinary hearing before the dismissal. That

