



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE NO 1534 OF 2014
EARNEST NECHESA OBUKU.....CLAIMANT
VERSUS
BILMAS CO. LTD T/A BILMAS HOTEL.....RESPONDENT

JUDGMENT

1. The matter proceeded ex parte after the court became satisfied that the claimant was duly served but failed to enter appearance and file a defence to the claim.
2. In the memorandum of claim filed on 2nd September, 2014 the claimant averred that he was employed by the respondent as a cleaner on 1st June, 2012 and worked until 30th June, 2014.
3. According to the claimant, on the material day he reported to work as usual but the respondent's manager one Maurice Ojwang barred him from signing in on the grounds that the director had left strict instructions that his services were no longer needed. The said Mr Ojwang paid him his salary for the month of June 2014 and asked him to leave with instructions never to come back to the respondent's premises.
4. According to the claimant no reason was intimated to him why he was being summarily dismissed.
5. The claimant denied frequently reporting to duty late. She admitted writing an apology letter when she was accused of not doing her work properly.
6. Under section 43 of the Employment Act the burden of proof of reasons for termination rests on the employer. The respondent did not file appearance and defence to the claim hence the court is unable to know the reasons for the termination of the claimant's services. The burden cast upon the respondent by law therefore remained undischarged with the conclusion that the court will deem the termination unfair as provided under section 43 of the Employment Act.
7. The court therefore awards the claimant as follows:-

	Kshs.
<i>a. One month's salary in lieu of notice</i>	7,500
<i>b. Payment in lieu of untaken leave</i>	15,000
<i>c. Service gratuity for 2 years</i>	7,500
<i>d. Eight months' salary as compensation for unfair dismissal</i>	<u>60,000</u>
<i>e. <u>Costs of the suit</u></i>	<u>90,000</u>
<i>f. Items (a), (b), (c) and (d) shall be subject to taxes and statutory deductions.</i>	

8. It is ordered.

Dated at Nairobi this 25th day of January, 2019

Abuodha Jorum Nelson

Judge

Delivered this 25th day of January, 2019

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge