



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**  
**KENYA AT NAIROBI**  
**CAUSE NUMBER 69 OF 2015**

**MICHAEL OKWARO.....CLAIMANT**

**VERSUS**

**MEGTRACO LIMITED.....RESPONDENT**

**JUDGEMENT**

1. This matter proceeded ex-parte after the court was persuaded that the respondent was duly served.
2. According to the claimant he was employed by the respondent as a driver between November 2013 and December 2014 at a salary of Kshs 15,000 per month. The appointment was oral. His job according to him, entailed transportation of LPG gas that the respondent was selling.
3. On 22<sup>nd</sup> November, 2014 he was tasked to transport gas to Sarit Centre Westlands but immediately he left the respondent’s premises around 9.00 a.m. together with the turnboy a saloon Toyota Corolla overtook them and the occupant who had police walkie-talkie ordered him to pull the vehicle aside which they did and were bundled out of the vehicle into the saloon vehicle which then sped off.
4. According to him they were handcuffed and fleeced of their valuables. The people who he now realized were thugs took them to various places they did not know where they were covered with big jackets. He was asked for his M-shwari pin number and national identity card. He later came to learn that the thugs withdrew Kshs 140,000/= from his mpesa account. At around 2.00 pm they were dropped at a place they did not know but when he asked he was told it was Ruai. He tried to report the incident to Ruai police station but was advised to report to the station near where they were hijacked which was Embakasi. He then borrowed a phone from a policeman and called his boss and told him what had happened.
5. After 2 days his boss told him that he had been called and told the lorry was at Buruburu Police Station and that he should go and collect it. He brought back the lorry and continued working as usual. Four days later an insurance agent came to the company premises to take a record of what had been lost. He gave a list of items which had been taken from the lorry which included LPG cylinders, a spare wheel, jack and also the money withdrawn from his Mpesa account.
6. On 8<sup>th</sup> December, 2014 he was called and issued with a termination letter. The letter had attachment in which he was requested to sign that he had received all his dues. According to the claimant he declined to sign the letter and a Mr Neal Patel chased him away hurling insults at him calling him a robber.
7. The burden of proof of reasons for which a contract of employment has been terminated rests on the employer. In default the court shall find that the termination of employment was unfair. The respondent herein though served never entered any appearance nor filed a defence to rebut the claimant’s claim. The court has considered the claimant’s version of how his contract with the respondent came to an end and is in the view that he has discharged the burden of proof cast upon him by law.
8. The court therefore awards claimant as follows:

Kshs

- |   |        |
|---|--------|
| a. One month’s salary in lieu of notice | 15,000 |
| b. November salary                      | 15,000 |
| c. Six months’ salary as compensation   |        |

for unfair dismissal

90,000

**120,000**

d. Costs of the suit

e. Award subject to taxes.

9. It is so ordered.

**Dated at Nairobi this 31<sup>st</sup> day of May, 2019**

**Abuodha J. N.**

**Judge**

**Delivered this 31<sup>st</sup> day of May, 2019**

**Maureen Onyango**

**Principal Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.