



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CAUSE NO. 87 OF 2017**

*(Before Hon. Justice Mathews N. Nduma)*

**EDWARD MERA RAO.....CLAIMANT**

**VERSUS**

**ROBINSON INVESTMENT LIMITED.....RESPONDENT**

**JUDGMENT**

1. The suit was filed on 28<sup>th</sup> February 2017 seeking compensation for unlawful termination of employment, arrear salary from 1<sup>st</sup> August 2015 and salary in lieu of notice in the sum of Kshs 42,000.

2. The suit was served on the respondent on 10<sup>th</sup> March 2017 and an affidavit of service filed by Mr. Richard Otieno Okungu, an advocate in conduct of the suit.

3. The respondent did not enter appearance nor file a statement of defence.

4. The suit proceeded to formal proof on 11<sup>th</sup> July 2018. The claimant testified under oath in support of the case. He relied on a witness statement dated 28<sup>th</sup> February 2017 as his evidence in chief. The claimant produced the documents annexed to the statement of claim as exhibits in the suit.

5. The undisputed fact of the case are that the claimant was employed by the respondent in 1<sup>st</sup> September 2014 as a security guard. The claimant earned Kshs. 7,000 per month. On 1<sup>st</sup> August 2015 the respondent terminated the employment of the claimant verbally.

The claimant was informed that there was no more work to be done. The claimant produced NSSF and NHIF statements paid for him by the respondent. He told the court that he was not given notice of termination, reason for termination and was not subjected to any disciplinary hearing. The claimant testified that the termination was unlawful. That he was only paid Kshs 4,000 upon termination. The claimant sought payment in lieu of notice. The claimant also sought compensation for the wrongful termination of employment.

6. The claimant has proved on a balance of probabilities that his employment was terminated without notice, any reason or disciplinary hearing. The termination of the employment of the claimant was unlawful and unfair and in violation of *Sections 41, 43 and 45 of the Employment Act*. The claimant is entitled to compensation in terms of *Section 49 (1) (c) as read with 49(4) of the Employment Act 2007*.

7. The claimant did not contribute to the termination. The claimant had served the respondent for about one year. The claimant was underpaid in terms of the General Wage Order. The claimant was not paid in lieu of notice. The claimant lost his employment unfairly and suffered loss and damage.

8. The court awards the claimant three (3) months salary in compensation for the wrongful termination of employment in the sum of Kshs 35,000.

9. The claimant is also awarded Kshs 7,000 in lieu of one month notice.

10. In the final analysis judgment is entered in favour of claimant as against the respondent for Kshs. 42,000. The award is with interest at court rates from date of judgment till payment in full. The respondent to pay costs of the suit.

**Judgment Dated, Signed and delivered this 20<sup>th</sup> day of May, 2019**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Okungu for the claimant.

Chrispo – Court Clerk