



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**  
**AT NAIROBI**  
**CAUSE NUMBER 1611 OF 2015**

**JUSTUS OMBUI MAGANGA.....CLAIMANT**

**VERSUS**

**METAL CANS AND CLOSURES (K) LIMITED.....RESPONDENT**

**JUDGEMENT**

1. In his memorandum of claim filed on 15<sup>th</sup> September, 2015, the claimant pleaded that she was initially hired by the respondent on 15<sup>th</sup> April, 2012 as a helper at hourly pay of Kshs 57/= which translated to Kshs 13,680/=. He was later promoted to a machine operator on 20<sup>th</sup> October, 2013 at a salary of Kshs 75/= per hour which translated to Kshs 18,000/= per month.

2. On or about 24<sup>th</sup> April, 2015 whilst the claimant was in ordinary course of his employment and lawfully operating his machine he sustained serious injuries on three of his fingers which were cut as he was operating the machine. On or about 2<sup>nd</sup> May, 2015 while the claimant was recuperating at home, the respondent informed him that his contract of employment has been terminated. This was done without giving him any notice or legal justification for the termination. The respondent further refused to pay the claimant his full terminal benefits.

3. The respondent though served never entered appearance or filed a response to the claim. At the oral hearing the claimant adopted his witness statement which he recorded on 15<sup>th</sup> September, 2015 together with the supporting documents filed with the claim. In the statement the claimant repeated the averments in the memorandum of claim.

4. Under the Employment Act, the burden of proof that a lawful termination of service has occurred rest with the employer. In this particular case, the respondent though served didn't file any response to the claim. Neither did it attend court to cross-examine the claimant over his allegations. The claimant's claim therefore remained uncontested and the court therefore proceeds to award the claimant as follows:

a. One month's salary in lieu of notice	18,000
b. Six months' salary for unfair termination of service	108,000
c. Service pay for 15 days each complete year of service	23,010

**149,010**

d. Costs of the suit

5. The award shall be subject to taxes and statutory deductions.

6. It is so ordered.

**Dated at Nairobi this 17<sup>th</sup> day of May 2019**

**Abuodha J. N.**

**Judge**

**Delivered this 17<sup>th</sup> day of May 2019**

**Abuodha J. N.**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.