



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NUMBER 1105 OF 2011**

**MOSES NJUE NGURU.....CLAIMANT**

**VERSUS**

**BIDCO OIL REFINERIES.....RESPONDENT**

**JUDGEMENT**

1. This cause proceeded as undefended cause. According to the claimant he was engaged by the respondent as a general worker in March, 2000 at a starting daily wage of Kshs 860 paid weekly.
2. On 10<sup>th</sup> March, 2010 he reported to work as usual but when he tried to log in the system failed. He reported the incident to the management but did not get any assistance prompting him to report the issue to the District Labour Officer where again he did not get any assistance. The claimant therefore brought the present claim to the court securing judgement against the respondent for payment of his terminal dues as well as compensation for unfair termination of services.
3. In his oral testimony in court the claimant reiterated the averments in the memorandum of claim and further stated that his supervisor Mr Mwangi advised him to stay away for a week and return thereafter but when he returned, he still could not be allowed access to his workplace.
4. Termination or dismissal from employment must be done for a valid or justifiable reason. Further in carrying out such termination, the employer must do so through a fair procedure. The burden of proof that a termination or dismissal took place for a valid or justifiable reason and further burden of proof that termination was carried out in accordance with proper procedure, rests with the employer.
5. The employer though entered appearance through Ms Musinga & Company Advocates failed to file a defence thereto and further failed to represent the respondent at the trial. The matter therefore proceeded as an undefended cause. However, the fact that a matter proceeds undefended does not lessen the burden of proof cast upon the claimant by law. Those matters upon which the onus of proof is placed upon such claimant must be proved to the required standards.
6. The claimant in his evidence in chief only testified to his dismissal and that his dismissal was unfair. The claimant pleaded issues of overtime and non-payment of house allowance but did not tender any evidence that such overtime was worked for but unpaid and further that he was entitled to house allowance but was never paid. No payslip or evidence of the amount payable to him either weekly or monthly was exhibited to vouch for these allegations. They therefore remained unproved and are hereby disallowed.
7. The court therefore enters judgement for the following only:

**Kshs.**

a) One month's salary in lieu of notice	10,800
b) Eight months salary as compensation for unfair termination of services	<u>86,400</u>
	<b><u>97,200</u></b>

c) Costs of the suit.

8. It is so ordered.

Dated at Nairobi this 10<sup>th</sup> day of February 2017

**Abuodha J. N.**

**Judge**

Delivered this 10<sup>th</sup> day of February 2017

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha J. N.**

**Judge**