



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1103 OF 2013**

**MATATA MONYI.....CLAIMANT**

**VERSUS**

**JIMCAB SERVICES LIMITED.....RESPONDENT**

**JUDGEMENT**

1. The claimant averred that he was employed by the respondent as a driver in early 2007 at a basic salary of Kshs 20,000/= per month. According to him on 4<sup>th</sup> March, 2013 the respondent's General Manager verbally dismissed him from employment on grounds that he talked to his supervisor in abusive language. According to him the accusations against him were false and malicious. The dismissal according to him was therefore unfair. The claimant therefore sought an order to be paid his terminal dues as well as compensation for unfair termination of services.

2. The respondent on its part averred that the claimant was properly dismissed on one of the grounds that he went to a bar using the respondent's vehicles and being drunk while on duty. Further, the respondent averred that the claimant's contract provided for summary dismissal for among other things being drunk while on duty. The issue of unfair, wrongful or inhumane dismissal therefore did not arise.

3. In his oral testimony in court, the claimant stated that on the material day which was a Saturday around 5.00 a.m. he was called by his supervisor who wanted to know why he was only on one site and he told him he had a client. The supervisor asked to talk to the client but the client instead asked for the vehicle to be returned to IFC as he wanted to use another car. It was his evidence that he did not attend the meeting called by the General Manager because he had worked overnight. He was later called and asked not to resume work and instead see Wamboi, the General Manager.

4. When he went to the General Manager, he was referred to the Human Resource Manager who told him his services had been terminated and that he should return the company's property. According to him he was told that he was terminated because he did not attend the General Manager's meeting and she felt it was insubordination. He further stated that he was never given a warning letter nor was he subjected to any disciplinary hearing. He admitted that he took alcohol but denied being drunk on the material day.

5. In cross-examination he stated that his salary was inclusive of house allowance and that as per his letter of appointment he understood he could be dismissed summarily for unauthorized absence from work of reporting to work intoxicated. It was his evidence that he was paid for leave in 2008 and 2009. He however stated that not all leave was paid for but could not remember which one was never paid for. He also admitted that he took a client to Umoja Estate for a meeting and stayed with the client on Friday through to Saturday morning.

6. The respondent on its part called one witness Mr Daniel Nyambari who testified that he was the proprietor of the respondent. It was his evidence that on 11<sup>th</sup> March, 2013 he was informed by the General Manager that the claimant was traced with the respondent's vehicle at Umoja while the vehicle was supposed to be at IFC Upperhill. According to him the respondent was dealing exclusively with World Bank Staff. There were some who lived in Umoja and the vehicles had to be returned by 11.00 p.m.

7. He further stated that the claimant was called but was not picking his calls. The supervisors therefore physically tracked the vehicle to Umoja where it was found outside a bar. The claimant thereafter hurriedly drove the vehicle where it was supposed to have been and left the keys with the guard. The claimant thereafter never came back to work. He was advised to report to the head office but never did.

8. In cross-examination he stated that the claimant was not authorized to be at Umoja at the time he was. He further stated that the claimant was never issued with any warning letter and that no disciplinary hearing was conducted.

9. Absence from duty without authority constitute one of the grounds for which an employee can be summarily dismissed. The same case goes for being intoxicated while on duty as to prevent an employee from performing work which was his duty to perform. It is however a requirement under the Employment Act that before a summary dismissal is done, an employee must be furnished with reasons for which the dismissal is being contemplated and his view thereon be heard. Where such employee has absented his or herself the employer before dismissing such employee must show that reasonable attempts were made to contact such employee and that he was warned that failure to show up and defend himself would result in a dismissal or termination of employment.

10. From the evidence before me, there existed reasonable grounds to dismiss the claimant however it was a legal requirement that he be taken through a disciplinary hearing or it be shown that by his own conduct such a hearing could not take place. This did not happen in this particular case. The court therefore finds and holds that the dismissal was unfair and awards the claimant as follows:-

	Kshs.
(a) One month's salary in lieu of notice	20,000
(b) Six months salary for unfair termination of services	<u>120,000</u>
	<b><u>140,000</u></b>
(c) Costs of the suit	
(d) Certificate of service	

It is so ordered.

Dated at Nairobi this 3rd day of February 2017

**Abuodha Jorum Nelson**

**Judge**

Delivered this 3<sup>rd</sup> day of February 2017

**Abuodha Jorum Nelson**

**Judge**

.....for Claimant

.....for Respondent