



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

**AT MOMBASA**

**CAUSE NO. 553 OF 2015**

**LEONARD OCHIENG ADHIAMBO .....CLAIMANT**

**VERSUS**

**OWL ALARMS KENYA LIMITED .....RESPONDENT**

**J U D G M E N T**

**INTRODUCTION**

1. This is a claim for terminal dues plus compensation for unfair termination of the claimant's employment contract by the respondent on 24/4/2014. The respondent never filed any defence and therefore the suit proceeded ex parte on 7/11/2016 when the claimant testified as CW1. Thereafter he filed written submissions.

**ANALYSIS AND DETERMINATION**

2. There is no denial that the claimant was employed by the respondent as security guard from 24/11/2012 earning Ksh.6000 per month. CW1 has produced payslips and letters from the respondent confirming that he was employed by the respondent. There is also no dispute that the claimant's employment contract ended on 24/4/2014. CW1 has alleged that he was dismissed on the said date by the respondent's operations manager for working without badge cap.

3. The issues for determination herein are

- a) Whether there was a valid and fair reason for terminating the claimant's contract of service.
- b) Whether the procedure followed in terminating the contract was fair.
- c) Whether the reliefs sought ought to issue.

**UNFAIR TERMINATION**

4. Under Section 45(2) of the employment Act, termination of employment is unfair unless the employer proves that it was grounded on a valid and fair reason and that it was done after following a fair procedure. Section 43 of the Act on the hand, provides that in any proceedings challenging termination of employment, the employer shall have the burden of proving the reason for the termination and in default, the termination shall be deemed to be unfair within the meaning of Section 45 of the Act. In this case the said burden has not been discharged by the respondent because, she defaulted to file defence and tendered

no evidence towards proving the reasons for dismissal. Consequently I find and hold that the termination of the claimant's employment contract by respondent was unfair within the meaning of Section 45 of the Act. In addition I hasten to hold that the termination was done without following a fair hearing under Section 41 of the Act which requires in mandatory terms that any employee be accorded a fair hearing before termination on account of misconduct.

### **RELIEFS**

5. In view of the foregoing finding that the claimant was unfairly terminated, I award him ksh.5660 being one month salary in lieu of notice plus Ksh 33960, six months' salary as compensation for the unfair termination under Section 49(1) of the Act. In awarding the said compensation, I have considered the fact that the claimant worked for only 2 years and that he did not contribute to the termination through misconduct.

6. The claim for salary for April 2014 was admitted by the respondent's letter dated 15/4/2015. I therefore award him ksh.5224.60 being the salary for the 24 days in April 2014.

7. He is also awarded 21 leave days being ksh.4571.55. No evidence was adduced that he was entitled to annual leave of 24 days.

8. The claim for public holidays is dismissed for lack of particulars and evidence.

9. The claim for refund of uniform levy was admitted by the respondent by the said letter dated 15/5/2015. I therefore award ksh.2000 as prayed.

### **DISPOSITION**

10. For the reason that the claimant's contract of service was terminated unfairly, I enter judgment for the claimant in the sum of ksh.49416.15 plus costs and interest.

Dated, signed and delivered this 31<sup>st</sup> March 2017

**O. N. Makau**

**Judge**