



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT AT NAIROBI**  
**CAUSE NUMBER 331 OF 2014**

**SHADRACK MUTUKU MUTUTU .....CLAIMANT**

**VERSUS**

**FIDELITY SECURITY LIMITED.....RESPONDENT**

**JUDGMENT**

1. This cause proceeded as undefended cause after I became satisfied that the Respondent was duly served with summons and claim but neither filed appearance nor defence.
2. When the matter came up for hearing, on 5<sup>th</sup> November, 2014 I sought to know from Mr. Nyangoro if he intended to rely on any documents or averments more than what he had pleaded and filed in Court and he informed me that he entirely relied on the pleadings and documents filed and requested if the case could be disposed of by way of written submissions. I granted the request and reserved a date for judgment.
3. The Claimant's counsel submitted that his client was an employee of the Respondent working as a security guard. He worked from 2004 until February 2013 when he was dismissed without any justifiable cause.
4. According to him, on 19<sup>th</sup> February, 2013 he was taken ill and sought medical attention at Makadara Mercy Sisters' Dispensary where he was treated for chest pains and given 3 days off duty. His health did not improve after the 3 days and he called his employer to inform them that he was still unwell and could therefore not resume work. He was then advised to report to work on 28<sup>th</sup> February, 2013 but when he did so he found his services had been terminated.
5. The Claimant therefore seeks an order for compensation from the Court as set out in paragraph 16 of the Memorandum of Claim.
6. Section 47 (5) of the employment Act places the burden of proving the occurrence of unfair or unlawful termination of employment on the employee while the burden of justifying the grounds for termination is placed on the employer. The Act further prohibits at section 45, unfair termination of employment. Termination of employment using an unfair procedure is deemed as one of the grounds of unfair termination.
7. From the facts as set out by the Claimant his services appear to have been terminated without following a fair procedure. He was neither given notice nor reasons for terminating his services.
8. The Court therefore awards him as follows:-

(a) One month's pay in lieu of notice .....Kshs.10,350

(b) Unpaid leave for 3 years.....Kshs.21,735

(c) 6 months' pay for unfair termination of services..Kshs.62,100

TOTAL

Kshs.135,585

9. The Claimant shall have costs of the suit. The Respondent is further directed to issue the Claimant with a Certificate of Service.

10. It is so ordered.

Dated at Nairobi this 13<sup>th</sup> day of February 2015

Abuodha J. N.

Judge

**Delivered this 13<sup>th</sup> day of February 2015**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge