



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

**AT NAIROBI**

**CAUSE NUMBER 1674 OF 2012**

**MUTIE MUINDI NGUTA.....CLAIMANT**

**VERSUS**

**SPUR SECURITY LTD.....RESPONDENT**

**JUDGMENT**

1. This matter proceeded as an undefended claim after the Court was satisfied that the respondent though served neither entered appearance nor filed a defence to the claim.
2. According to the claimant he was employed by the respondent in August, 2006 as a guard earning Kshs.4,000 per month. He served until October 2008 when his services were terminated without any lawful cause and upon termination he was never paid his terminal dues.
3. The claimant therefore sought compensation in the sum of Kshs.143,730/= comprising of one month's salary in lieu of notice, salary arrears, house allowance, under payments and 12 months wages as compensation for unfair dismissal.
4. The claimant in his evidence in Court stated that he worked for the respondent for two years. It was further his evidence that he got sick in 2008 June and was away for 3 months. He went to hospital for treatment and presented a letter from hospital in order that he could be assigned daytime duties. It was his evidence that when he resumed duties, he was not paid his money. He therefore left employment on 1<sup>st</sup> November, 2008. According to him he reported the dispute to his union but they were unable to resolve the matter.
5. The employment Act at section 47 places the onus of proving that unfair termination or wrongful dismissal has occurred on the employee while the burden of justifying the grounds for termination or dismissal shall rest on the employer. The employer/respondent in this matter neither appeared nor filed a response to the claim herein. However failure on the part of a respondent to defend a claim in no way lessens or waives the burden placed on a claimant to prove that his or her termination was unfair or dismissal wrongful.
6. The claimant in this matter claimed that he was dismissed when he returned to work after being absent from work for three months due to illness. It was his evidence that he presented a letter from the hospital he attended for treatment in order to be assigned day time duties. The claimant however never attached to his memorandum of claim nor produced in Court a copy of such letter or any treatment note to show he was unwell during the period claimed.

7. Further whereas the claimant alleged that he reported the matter to his union who he claimed were unable to resolve the matter, he never placed before Court any proof of membership to a union or produced any letter or memorandum showing any such attempt was made. Regarding existence of employer-employee relationship, the Court concedes that the claimant may not have been issued with a letter of appointment however the production of a job identity card or some payslip or evidence of remittance of salary to him by the respondent could have reasonably established that there was some employer-employee relationship between the claimant and the respondent.

8. In absence of all these, the claimant has failed to prove his claim against the respondent and the same is hereby dismissed with costs.

9. It is so ordered.

Dated at Nairobi this 19<sup>th</sup> day of June 2015

Abuodha J. N.

Judge

Delivered this 19<sup>th</sup> day of June 2015

**In the presence of:-**

.....for the Claimant

and

.....for the Respondent.

Abuodha J. N.

Judge