



**REPUBLIC OF KENYA**

**Industrial Court of Kenya**

**Cause 1892 of 2011**

**NGAIRA LUMAKUNJA .....CLAIMANT**

**VERSUS**

**CLAR SECURITY SERVICES..... RESPONDENT**

**JUDGMENT**

The Claimant is Ngaira Lumakunja and the Respondent is Clar Security Services. The Respondent was served with the summons and the memorandum of claim but failed to enter appearing and to file the memorandum of Response. The case came up for hearing on 27<sup>th</sup> November, 2012 when the Respondent did not attend court despite service of the relevant hearing notice.

The claimant gave evidence to support his case as follows:

1. In June 2011 the Respondent through one Mike head-hunted the claimant from his previous employment and employed the claimant as a security guard at a monthly wage of Ksh.7,000/=.
  2. The claimant's son was admitted to the Kenya Medical Training Institute and the claimant applied for permission to attend the admission process. The Respondent denied him permission so that the claimant arranged with a workmate to step in and perform his duties while the claimant attended to his son's admission as scheduled. That was in August, 2011. He had worked for three months and he was away for two days attending to the son's college admission.
  3. Upon return to work he was advised to go back and wait until he would be recalled back. He waited in vain and he suffered injury due to loss of employment.
  4. Despite demand through Kituo Cha Sheria, the Respondent has failed to redress the claimant's demands for terminal dues.
  5. The claimant field the case claiming-
    - (a) One month's salary in lieu of notice - Ksh.7,000.00
    - (b) Salary for August 2011 - Ksh.7,000.00
    - (c) Service pay - Ksh. 875.00
- Total - Ksh.14,875.00**

He also prayed for any further relief as the court may deem just, interest and costs.

The court has considered the claimant's case and finds that the Respondent constructively dismissed the claimant unfairly. The claimant's oral and documentary evidence being Exhibits C<sub>1</sub>, C<sub>2</sub>, C<sub>3</sub>, C<sub>4</sub> and C<sub>5</sub> have proved his case on a balance of probabilities. The Claimant is awarded Ksh.14,000/= being two month's salary for unfair termination.

In conclusion, judgment is entered for the claimant against the Respondent for-

- (a) a declaration that the claimant was constructively dismissed unfairly;
- (b) the respondent to pay the claimant a sum of Ksh.28,875.00/= plus interest at court rates from date of judgment till full payment; and
- (c) respondent to pay costs of the cause.

Signed, dated and delivered at Nairobi this 30<sup>th</sup> day of November, 2012.

**Byram Ongaya**  
**JUDGE**