



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 42 OF 2017**

**PRESSMASTER LIMITED.....CLAIMANT**

**VERSUS**

**SANTOSH KUMAR.....RESPONDENT**

**JUDGMENT**

1. Santosh Kumar was employed by the Respondent as an expatriate from India in production. The Respondent was meant to train and impart knowledge on some software imported from India. He was paid some Kshs. 168,810/- a month but apparently went missing on 3<sup>rd</sup> November 2016. The suit was filed on 12<sup>th</sup> January 2017 after efforts to trace the Respondent failed. The help of the Police was even sought but the Respondent was not found. The suit papers were served through an advertisement carried in the Daily Nation and he did not enter appearance nor file a defence to the suit. The Claimant sought 1 month's salary as notice pay – Kshs. 168,810/-, payment made to Kolluru Consultants – Kshs. 164,495/-, loss of production due to non-handling charges – Kshs. 1,000,000/-, cost of work permit – Kshs. 400,000/-, mobile expenses for November – Kshs. 2,000/-, cost of the Claimant's mobile phone Kshs. 7,000/- cost of software Kshs. 300,000/-, cost of transferring software, cost of advertisement – Kshs. 34,522/- making a grand total of Kshs. 2,476,830/-. The Claimant also sought payment of costs and interest.

2. The Claimant's witness Harjinder Singh Panesar testified and stated that the Respondent was employed through an agency. The Respondent was from India but was working in Nakuru when he joined the Claimant. They applied for a work permit for the Respondent for 2 years and the terms and conditions were set out and the Respondent had a lot of experience in corrugated department. He stated that the Respondent reneged on the agreement and absconded by calling taxi at 5.00am, packed his belongings into the cab and left. He stated that the Respondent did not give a one month's notice as required and therefore caused the Claimant loss for which it looked to him for recompense.

3. The issues the Claimant isolated for determination were whether there was a desertion of employment by the Respondent and whether the Claimant was entitled to the reliefs sought including costs. The Respondent had been engaged to work in the production department of the Respondent. He was an Indian expatriate though from evidence adduced had been working in Nakuru. The Respondent absconded from work by abruptly leaving the Claimant without giving any notice. The letter of appointment provided for 2 months notice but the Claimant only sought one month in the claim. There is no evidence of the loss of production due to non-handling charges – Kshs. 1,000,000/-, mobile expenses for November – Kshs. 2,000/-, cost of the Claimant's mobile phone Kshs. 7,000/- cost of software Kshs. 300,000/- and cost of transferring software Kshs. 400,000/-. Only the charges for the newspaper advertisement, payment to Kolluru Consultants, the one month notice, cost of work permit and costs of the suit can be recovered. In the final analysis I enter judgment for the Claimant against the Respondent for:-

- a. Kshs. 168,810/- being one month notice,
- b. cost of work permit Kshs. 400,000/-
- c. payment to Kolluru Consultants Kshs. 190,814/-
- d. newspaper advertisement Kshs. 34,522/-
- e. costs of the suit.

It is so ordered.

**Dated at Nyeri this 5<sup>th</sup> day of December 2018**

**Nzioki wa Makau**

**JUDGE**

**Delivered at Nairobi this 11<sup>th</sup> day of December 2018**

**Radido Stephen**

**JUDGE**