



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

**CAUSE NUMBER 1285 OF 2012**

**DAVID KAHURA MBURU.....CLAIMANT**

**VERSUS**

**SBI INTERNATIONAL HOLDINGS AG KENYA.....RESPONDENT**

**JUDGEMENT**

1. The claimant averred that he was employed by the respondent as a greaser in a workshop owned by the respondent's road construction company. On 13<sup>th</sup> May, 2011 he got injured in his finger while at work and treated. On 18<sup>th</sup> May, 2011 he went to the Occupational Health Office in Kericho and was issued with claim form which required to be filed by his employer but when he took it to the employer's Project Officer he refused to fill it and told him to take the respondent to court and use the form as an exhibit.
2. According to the claimant, he thereafter proceeded to his home in Nyahururu where he continued to get treatment after assuring the hospital that his employer would pay the bill. When he submitted the hospital bill to his workshop manager a Mr Zaddock he was told the respondent did no offer Workmen's Compensation Insurance and threatened to terminate his contract if he did not stop complaining.
3. On 10<sup>th</sup> February, 2012 the doctor from Nyahururu called Mr Zaddock about the hospital bill. He was terminated as a result because he had earlier been warned about complaining. He reported the dispute to the Labour Office Kericho from where he was advised to take the issue to court. The claimant therefore claimed his terminal dues as well as compensation for wrongful and unfair dismissal.
4. The respondent on its part averred that the claimant was hired as temporary staff for the period of this project which was twelve months and the contract was not renewable. The respondent further avers that it paid the claimant one month's salary in lieu of notice and all his overtime claims. The respondent attached the claimant's payslip to prove this. The respondent further denied it was obligated to pay the claimant the sum of Kshs 26,545/= on account of medical expenses.
5. The claimant repeated the averments in his pleading during his oral evidence in court. In cross-examination he stated that he was employed on 2<sup>nd</sup> February, 2011 and would earn a daily wage varying between Kshs 418/= and 500/=. He also stated that he was not sure if the court had jurisdiction to hear his claim on negligence based on the injury he got at work. The respondent did not call any witness.
6. The claimant engaged with the respondent for an aggregate period exceeding one month hence if his services were to be terminated he ought to have been treated as a regular employee for which section 35(1)(c) applied. Further in terminating his services, the respondent was under duty to give reasons for

doing so as well as carry out the termination through a fair procedure. The claimant herein avers that his services were terminated after he got injured at his work place and sought money for medical treatment. He further claimed that his dismissal was because he wanted to seek compensation for his injuries.

7. The respondent in its defence to the claim did not refute these averments. The respondent only stated that upon termination of the claimant's services he was paid his terminal dues. The allegations of unfair termination therefore remain uncontroverted and the court finds in favour of the claimant in that regard.

8. Concerning the claim for injuries sustained in the course of his employment, the court as yet, does not have jurisdiction to entertain such claims. The court is of the view that injuries sustained in the course of employment are no different from any other tortious claims. They do not have anything to do with the injured employee's contract of employment. Besides Commonwealth practice do not show any Employment and Labour Relations Court within it that also handles workmen compensation claims. The court will therefore not make any finding on this claim including the claim for medical expenses.

9. The court therefore enters judgement against the respondent as follows;

- a) One month's salary in lieu of notice 14,900
- b) Two month's salary in lieu of leave 29,800
- c) Eight months salary for unfair termination of service 69,600

**163,900**

10. The claim for overtime is disallowed as the claimant's own documents in support of the claim show overtime was paid.

11. It is so ordered.

Dated at Nairobi this 17<sup>th</sup> day of February 2017

**Abuodha J. N.**

**Judge**

Delivered this 17<sup>th</sup> day of February 2017

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha J. N.**

**Judge**