



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT AT NAIROBI**  
**CAUSE NUMBER 675 OF 2012**

**WILLIAM M. BURUGU.....CLAIMANT**

**VERSUS**

**SOLOH WORLDWIDE INTER-ENTERPRISES LTD.....RESPONDENT**

**JUDGMENT**

1. The Claimant alleged that he was employed by the Respondent in June 2011 as a Machine Operator earning salary of Kshs.50,000/= per month. His contract of engagement was verbal. He worked until 3<sup>rd</sup> February, 2012 when he claims the Respondent's Managing Director unfairly terminated his services. He therefore seeks an order for compensation from the Court being:-

*(a) a declaration that his dismissal was unprocedural, unfair and unlawful*

*(b) two months' salary in lieu of notice*

*(c) unpaid salary*

*(d) service pay*

*(e) earned leave days*

*(f) compensation of twelve month's wages.*

2. The Respondent entered appearance to the suit and filed a defence. It admits employing the Claimant but denies his salary was Kshs.50,000/-.

3. The Respondent further averred that the Claimant was terminated after failure to avail his academic and professional certificates as promised and despite several reminders. The Respondent further averred that the Claimant eventually deserted work on 2<sup>nd</sup> February, 2012 as a result of which he was automatically dismissed.

4. At the trial the Claimant testified that he holds a certificate in printing from Kenya Polytechnic. It was his evidence that he sought and got employment from the Respondent and worked until 2<sup>nd</sup> February, 2012 when he was told not to report to work and wait to be called.

5. According to him, he was never called back to work. After 3 weeks he went to his place of work to find out why but was told that there was no reason and that his services had been terminated. He denied absconding duty and stated that he gave the Respondent his documents as

requested.

6. In cross-examination he insisted that he gave the Respondent his documents. He admitted that he did not have the documents in Court. He further admitted that the issue of his certificates was raised by the Respondent.

7. The Respondent on its part called one Doris Mwita who stated that she works for the Respondent as head of finance and also in charge of human resource. It was her evidence that when the Claimant visited them they were in urgent need of a machine operator. The claimant told her he had experience with the machine they were in need of an operator.

8. He was allowed to work on the machine under supervision. At the time of engagement, he did not have any CV or certificates with him. She further testified that the company needed these documents in order to complete the contract but the Claimant said they were with his previous employer in Uganda.

9. She handed over the issue of the Claimant's documents to the operations director since the Claimant had failed to give them to her. It was her evidence that the claimant failed to turn up for work when he was asked for the documents by the operations director.

10. Regarding the Claimant's salary, it was her evidence that the Claimant was paid Kshs.50,000/- all inclusive. Concerning overtime, she testified that the Respondent had a login book where overtime was recorded and that the Claimant did not log in hence could not be paid overtime. She admitted that the Claimant was entitled to two days salary for February 2012 and 12 days of leave.

11. In his closing submissions filed herein, Mr. Kamotho for the Claimant contended that for the Respondent to have employed the Claimant and put him on payroll, the Respondent must have been satisfied over his qualifications. Counsel further submitted that his client did not desert duty taking into account that he went to see the Respondent's Director and wrote the letter dated 8<sup>th</sup> March, 2012 asking for his terminal dues.

12. Counsel submitted that if the Respondent wanted to terminate the Claimant's services on account of failure to produce certificates, it was incumbent upon the Respondent to issue him with a letter to show cause why disciplinary action should not be taken against him. Further if the ground for termination was on account of absconding duty, it was mandatory for the Respondent to invite the Claimant to a hearing on the allegations of absconding duty.

13. Mr. Kang'ethe for the Respondent on his part submitted that the Respondent was justified in terminating the Claimant's services when he failed to produce his certificates. Counsel submitted further that the issue of the certificates was raised in the Respondent's defence and this constituted sufficient notice to the Claimant on the nature of defence the Respondent intended to advance during the trial yet the Claimant still failed to produce his certificates in Court.

14. In claims arising out of termination of employment the employer has a duty to prove reasons for termination of employment and where the employer fails to do so, the termination shall be deemed unfair.

15. Section 47 (5) of the Employment Act further places the burden of proving that the dismissal was unfair on the employee while justification for grounds of dismissal rests with the employer.

16. The Respondent denies dismissing the Claimant and avers that it is the Claimant who absconded work after failing to produce his certificates and documents in order to formalize his contract of employment. In this regard, the Court takes the view that failure to produce his certificates may have been a valid reason for terminating the Claimant's services and more so failing to produce them in Court even after the Respondent had raised the issue in its defence reasonably proves that the claimant may not have had these documents.

17. However to succeed on the issue of absconding duty the Respondent ought to have produced some letter or correspondence to the Claimant informing him of the intention to terminate his services if he did not report to work.

18. Absence from work without lawful cause or leave is one of the grounds that can lead to summary dismissal hence the Respondent ought to have in accordance with section 41(1) of the Employment Act informed the Claimant of such intention. This not having been done, the Court finds that whereas the reason for terminating the Claimant's services may have been justifiable, the termination is unfair for want of fair procedure.

19. Consequently, the Court awards the Claimant 4 months wages on account of unfair termination of employment. The Claimant will further have one month's salary in lieu of notice.

20. In conclusion the Court enters judgment against the Respondent as follows:-

- (i) One month's salary in lieu of notice .....50,000/-*
- (ii) Four month's wages for unfair termination.200,000/-*
- (iii) Salary for two days in February.....3,300/-*
- (iv) Twelve days leave.....20,000/-*

**Total** **273,300/-**

21. It is so ordered.

Dated at Nairobi this 20<sup>th</sup> day of February 2015

Abuodha J. N.

Judge

Delivered this 20<sup>th</sup> day of February 2015

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge