

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT NO. 125 “A” OF 1998

MOMBASA FIRE BRIGADE ASSOCIATION PLAINTIFF

V E R S U S

MUNICIPAL COUNCIL OF MOMBASA DEFENDANT

JUDGMENT

The plaintiff is an association of employee of the defendant in its department of Fire Brigade and Ambulance Service. The Plaintiffs plead the existence of an agreement with the defendant which agreement is not disputed by the defendant. Under the said agreement the plaintiffs were entitled to overtime payment for extra hours worked over and above the 52 hours lawfully agreed upon. The payment was to be paid by cash or by granting leave in lieu of the overtime worked.

The defendant does not dispute that the plaintiff worked overtime as claimed namely from August 1994 to February 1998 or that the cash payable is as the pleaded Shs. 3.436.489/55. The defence witness Patrick Anthony Charo said that the plaintiffs were “not entitled to payment because there are stages they undergo before they are paid. The plaintiffs presented their case to the council and the council opted to give them off day instead of cash.

“Payment of overtime is a right. The suit is premature the plaintiffs never came to claim off days.”

The evidence shows that there was option for plaintiffs to accept cash or take off days. No evidence is shown that the defendant gave the plaintiffs right to exercise option. There was no record that some plaintiffs, as alleged by defendant or any of them did take the leave option. However the plaintiffs showed that their claims were approved by the Town Clerk and that it was never possible for any of them to take time off because of pressure of work. Therefore only payment in cash was possible.

I am convinced that there is no defence to the plaintiffs claim. The plaintiffs are therefore entitled to their claims in cash as claimed.

I enter judgment therefore, for the plaintiff in the sum of Shs. 3.436.489.55 plus interest and costs.

Dated this 17th day of June, 2002.

J. KHAMINWA

COMMISSIONER OF ASSIZE

Read in presence of Mr. Karisa

J. KHAMINWA

COMMISSIONER OF ASSIZE