



**Riley Falcon Security Services Limited v Okwaro (Appeal E041 of 2025)  
[2025] KEELRC 2575 (KLR) (25 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2575 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
APPEAL E041 OF 2025  
M MBARŪ, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**RILEY FALCON SECURITY SERVICES LIMITED ..... APPELLANT**

**AND**

**PRESTON ASEMBO OKWARO ..... RESPONDENT**

*(Being an appeal from the judgment of Hon. J. B. Kalo delivered  
on 19 February 2025 in Mombasa CMELRC No. E674 of 2021)*

**JUDGMENT**

1. The appeal arises from the judgment of Hon. J. B. Kalo delivered on 19 February 2025 in Mombasa CMELRC No. E674 of 2021. The appeal is that the learned magistrate erred in awarding the respondent overtime, despite evidence in the pay slips showing that such overtime was already included in the monthly wage. The award of leave pay was in error as this was time-barred by virtue of being a continuing injury. The payment of terminal dues included accrued leave days. The award of damages and interests was in error and without any reasons.
2. The background of the case was a claim filed by the respondent against the appellant. His case was that he was employed as a night guard on 1 March 2016 on a one-year renewable contract and paid Ksh. 8,707.5. Through a notice dated 26 February 2020, he was issued with notice of intention to terminate employment on 31 March 2020, and his terminal dues would be settled. However, he worked for 4 overtime hours without compensation. Through a letter dated May 9, 2017, the appellant indicated that overtime would be paid for only 2 hours, which was contrary to the law. He thus claimed the followings;
  - a. underpayments March 2016 to April 2017 Ksh.24,683.35;.
  - b. unpaid overtime May 2016 t April 2017 Ksh.125,897.2;



- c. overtime May 2017 to April 2018 Ksh.93,717.50;
  - d. underpayment for 2017 Ksh.14,420.90;
  - e. overtime May 2017 to April 2018 Ksh.92,074;
  - f. leave pay for 2018 Ksh.15,141.95;
  - g. overtime from May 2017 to April 2018 Ksh.73,564;
  - h. Unpaid leave for 2019 Ksh. 15,141.95;
  - i. Interests and costs.
3. In response, the appellant admitted that the respondent was employed as a guard on fixed-term contracts renewed annually from February 2016 to March 2020. His last gross salary was Ksh. 221 per month. His employment depended on the availability of work, and he was stationed at the United Nations Support Office in Somalia (UNOS), Mombasa premises. The work was governed by a contract between the appellant and UNOS, which expired in March 2020. Notice was issued, and the respondent received his full terminal dues. The claims relating to 2019, 2018, and 2017 are time-barred and should be dismissed.
  4. The learned magistrate heard the parties and concluded that the employment was lawfully terminated and that due process was followed. Regarding the claims, the magistrate found that the overtime was supported by credible evidence and was uncontested, thus amounting to Ksh. 564. There was no proof of taking annual leave in 2019 and 2018, which amounts to Ksh. 30,383.39.
  5. On the appeal, the submissions are analysed, and the issues for determination are whether the awards of overtime, leave pay, and interest are justified.
  6. It is a common cause that the appellant employed the respondent on an annual fixed-term contract. The last contract term expired through notice dated 26 February 2020, following the appellant's contract with the third party coming to an end.
  7. A term contract is lawful and legitimate under section 10(3) of the *Employment Act* (the Act). It starts and ends on its own terms, as held in *Transparency International - Kenya v Omondi* [2023] KECA 174 (KLR) and *Keen Kleeners Limited v Kenya Plantation and Agricultural Workers*.
  8. Each contract issued forms a distinct and separate relationship from the other.
  9. Any claim(s) arising out of each employment relationship must be addressed within the provisions of Section 90 of the Act.
  10. Claims for overtime, unpaid salary, or other work benefits that accrue daily, weekly, or monthly are classified as continuing injuries. They must be addressed according to the provisions of section 90 of the Act. In the cases of *Rift Valley Railways (Kenya) Ltd v Hawkins Wagunza Musonye & another* [2016] KECA 213 (KLR) and *The German School Society & another v Ohany & another* [2023] KECA 894 (KLR), courts have held that benefits such as allowances for housing, overtime, and work hours, which accrue daily, weekly, or monthly, must be considered as continuing injuries under section 90 of the Act. As continuing injuries, these claims must be addressed within 12 months from the date of cessation.
  11. The respondent claimed for overtime underpayments, as well as overtime and annual leave pay, dating back from 2016 to May 2018.

Employment terminated in March 2020.



The claim was filed in October 2021.

12. The alleged underpayments and ongoing injuries related to overtime should have been addressed within the provisions of section 90 of the Act within 12 months, that is, by 30 September 2020. These claims were based on separate employment contracts, each establishing a distinct employment relationship. To assert his case as of 1 October 2021 regarding alleged underpayments and overtime dating back to 2018, 2017, or 2016 was time-barred.
13. In any event, the appellant filed various payment statements for the respondent, including one for June 2019, April 2017, and March 2020, all of which include a payment for overtime.
14. In March 2020, the respondent was paid Ksh.3, 928 in overtime.
15. In June 2019 he was paid Ksh.8, 187 in overtime.
16. The records submitted demonstrate that the employer compensated the respondent for his work hours.
17. Regarding the claim for annual leave in 2019, as per the referenced payment statement, there is an allocation for leave travel allowance.
18. In the tabulation of final dues, the accrued leave days are indicated and cashed at Ksh.9, 989.60. This payment is not challenged. Under section 28(4) of the Act, an employee is permitted to accumulate leave days, but only up to a maximum of 18 months.
19. Based on the evidence before the court, the accrued leave days were compensated in a manner that was appropriate.
20. Regarding the award of costs and interest, it is indeed the case that employment claims do not attract costs, and where this is found to be justified, reasons must be stated. The learned magistrate addressed nine.
21. Based on the findings above, the costs are not justified.
22. The appeal is allowed, the judgment in Mombasa CMELRC No. E674 of 2021 is set aside in its entirety. Each party is to bear its costs.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

..... and .....

