



Kenya Shipping Clearing & Warehouses Workers Union v Maya Freight Limited (Employment and Labour Relations Cause 898 of 2018) [2025] KEELRC 2815 (KLR) (21 October 2025) (Ruling)

Neutral citation: [2025] KEELRC 2815 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 898 OF 2018**

**HS WASILWA, J
OCTOBER 21, 2025**

BETWEEN

**KENYA SHIPPING CLEARING & WAREHOUSES WORKERS
UNION CLAIMANT**

AND

MAYA FREIGHT LIMITED RESPONDENT

RULING

1. Vide a Judgment dated 31st October 2024, this court rendered its decision in this matter and under paragraph 57 and 58, the Hon. Judge ordered that:

“ 57. In conclusion the court will not give orders for reinstatement of the claimant to his former employment. He will however be paid his entitlements as follows if not already paid: -

1. Days worked up to and including 25th May 2018
2. Leave days earned up to 25th May 2018
3. Overtime earned and not compensated up to 25th May 2018

58. The respondent to give the accounts and settle the above reliefs if not already paid plus interest from 25th May 2018 at 12% per annum until full payment.

Mention on 3rd December 2024 to confirm the same is settled and also claimant to secure his certificate of service by that date.”

2. Subsequently, the Respondent filed an affidavit giving account as to the payment of the Grievant’s terminal dues dated 20th March 2025 wherein it produced documents showing that the Grievant was paid all dues before his termination.



3. In response, the Claimant union filed an affidavit dated 2nd April 2025 arguing that the amounts reflected in the pay slip from May 2018 of Kshs. 24,010.37 does not constitute the Grievant's final settlement as ordered in the judgment of 31st October 2024.
4. The matter came up from mention on 30th April 2025 and upon hearing the parties' arguments, the court ordered that the parties try an out of court settlement.
5. Subsequently, the matter came up for mention again on 19th June 2025, wherein the parties informed the court that they have on issues in dispute except for leave days earned. The court thereby directed that the parties file a 2-pager affidavit on the same.

Claimant union's Case

6. The Claimant union filed an affidavit dated 2nd July 2025 sworn by James Tongi, its General Secretary.
7. The Claimant union avers that it was mutually acknowledged by the parties that Mark Opaye Wangusi (the Grievant) was employed by the Respondent on 1st January 2002; and while the Respondent maintained leave records from 2005, however, no such documentation was availed for the period between 2002 to 2004.
8. The Claimant union avers that the leave form for the year 2004 explicitly indicated that a balance of twenty days had been carried forward into the said year.
9. It is the Claimant's union's case that unpaid leave is substantiated by the absence of duly maintained leave records in the Respondent's custody for the aforementioned period. Consequently, the Grievant is entitled to twenty-one days of leave per annum, as prescribed under Section 28(1) of the [Employment Act](#), for each completed year of service. It proceeded to lay down its calculations as follows:

21days x 3years x basic salary 25.455 = Kshs. 61,679.401= 26
 May 2018 to June 2025) at interest rate
 Kshs. 61,679.40 x 12/100 x 2618 /365 = Kshs. 53, 088.22/=

Kshs. 61,679.40 + Kshs. 53,088.22

Total = Kshs. 1149767.62/=
10. The Claimant union avers that they were unable to reach consensus regarding outstanding overtime payments, as the Respondent failed to adduce any documentary evidence demonstrating that the same had been paid to the Grievant. However, it produced an authentic pay slip of 2016, which established that overtime compensation was structured as a fixed monthly payment in accordance with the established terms of employment.
11. It particularized that outstanding overtime payments as follows:

The fixed of overtime Ksh2,800 x 3years (36 months) =Kshs. 238,000/= from 15 May 2018
 up to June 2025 is = 85 months) Interest rate = 238,000 x 12/100 x 2618/365 = Ksh.
 204,849.53 Kshs. 238,000 + Kshs. 204,849.53 = Kshs, 442,849.53/=
12. The Claimant union therefore seeks seeks judicial adjudication for a liquidated sum of Kshs. 557,617.15 (unpaid leave and overtime) to be formally recognized and incorporated into the court's judgment as the full and final settlement of all outstanding dues owed to the Grievant, pursuant to the established evidence and pleadings before this court.



Respondent's Case

13. The Respondent filed a replying affidavit dated 17th July 2025 sworn by Vitalis Osodo, its Group Human Resource Manager.
14. The Respondent avers that Grievant did not have any leave earned and not taken up to 25th May 2018, being the date of termination of his employment. Thus, the Claimant union's allegation that the Grievant did not go for leave for the year 2002-to 2004 is an afterthought.
15. The Respondent avers that the Grievant went for his annual leave for those years and his accrued annual leave from the previous year and up to 26th April 2005 was 21 days as is evident from his application for annual leave dated 26th April 2005. From the application, the Grievant applied for 1 day leave in April 2005 leaving him with a balance of 20 leave days.
16. The Respondent further avers that the Grievant utilized the said 20 days accrued annual leave having gone for leave from 16th August 2005 to 5th September 2005.
17. It is the Respondent's case that the Claimant's claim that the Grievant did not go for leave in the year 2002-2004 is unfounded and an afterthought as the said claim did not even form the Claimant's prayer/claim in the Memorandum of Claim dated 7th June 2018.
18. It is the Respondent's case that the claim for leave days for the year 2002-2004 even if they were not taken, would be time barred pursuant to section 89 of the *Employment Act*. Such a claim amounts to a continuing injury which must be pursued within 1 year after cessation and the same having not be part of the prayers sought in the Memorandum of Claim cannot be subject of the terminal dues.
19. The Respondent contends that the court intention for directing that the Grievant be paid his terminal due if not paid was not to reopen the case for statutory time barred claim but for what was due to the Grievant.
20. I have examined the averments of the parties herein. From the records supplied to court it is evident that the grievant proceeded for leave in years prior to 20015 and this is evidenced by the leave application form and the acknowledgment that 21 days leave was carried forward in the previous year.
21. As submitted by the respondents herein any claim for leave in previous years would also be time barred and not payable. On any other leave not taken, this court has time and again indicated that any party claiming for leave not taken must with evidence demonstrate that the said leave was applied for and denied or carried forward. In the absence of such demonstration, the claim for leave not taken over the years is not proved and is dismissed.
22. As concerns overtime pay, I have also considered all the payslips of the claimant exhibited before court. It is also evident that there was always payment of overtime to the claimant every month and if there is any other payable overtime not covered in the payslip, this must be produced by the claimant by exhibiting the time logs to show periods worked. No such evidence has been shown and it is therefore my finding that the payments for overtime has not been established and is also dismissed.
23. In essence, I find that there is nothing exhibited to show what is owing to the claimant save for the one payment of salary for 25 days worked up to 25th May 2018 which I award at kshs 22,350/- as prayed. There will be no order of costs on this application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21ST DAY OF OCTOBER 2025.



HELLEN WASILWA
JUDGE

