

REPUBLIC OF KENYA

**IN THE EMPLOYMENT AD LABOUR RELATIONS COURT OF KENYA AT
MOMBASA**

APPEAL NO. E130 OF 2025

WYCLIF NYARERA RIRO APPELLANT

VERSUS

CREST SECURITY SERVICES LIMITED RESPONDENT

**[Being an appeal from the judgment of Hon. L. K. Sindani delivered on 30 June 2025 in
Mombasa CMELRC No. E405 of 2022]**

JUDGMENT

The appeal arises from the judgment delivered on 30 June 2025 in Mombasa CMELRC No. E405 of 2022. The appellant is seeking the judgment be set aside on the basis that the learned magistrate erred in law and fact in failing to decide as to whether the respondent's witness was authorised to testify in the matter. The claim for overtime was not allowed, despite the contract dated 30 March 2015 and the Regulation of Wages (General) Order, 1982, both of which were ignored. The trial court erred in failing to award public holidays despite evidence of working on such days and failing to find that the employer had the duty to file work records under section 74 of the Employment Act.

The appeal is that the trial court failed to consider the evidence before it.

The appellant claimed that he was employed by the respondent from 2012 to 31 August 2020, as a project security officer, earning KSh. 18,000 per month. On 31 August 2020, his contract expired, and he elected not to renew it. He has been requesting his terminal dues for 8 years without success. He claimed as follows:

- a) Unpaid leave for 8 years Ksh. 100,000.
- b) Public holidays for 8 years Ksh. 105,600.
- c) Overtime Ksh. 1,411,200.
- d) Costs of the suit.

In reply, the respondent denied the claims and that the appellant should collect his Certificate of Service.

The respondent filed work records.

In the judgment, the learned magistrate analysed the claim and the evidence and dismissed it on the basis that a claim for work during public holidays should have been specifically pleaded and proved. Overtime is a special damages claim that must be proved, and no evidence was produced. There was a 12-hour shift schedule for 6 days a week, as per the contract of service.

The appellant submitted that the trial court disregarded his submissions that the respondent called a witness who had no authority to testify, as held in **Republic v Registrar General & 13 others [2005] eKLR**.

The trial court did not consider his evidence that he worked 20 hours of overtime each week, contrary to the Wages (General) Order 1982. Working from 6 am to 6 pm each day for 6 days resulted in 72 hours of work without compensation. Under the contract dated 30 March 2015, the appellant was required to work a 12-hour shift each day. Under the Regulation of Wages, the regular working hours are 52 hours per week, 6 days each. For the 20 hours each week, the appellant is entitled to compensation as held in **Joseph Omollo v Board of Management, Kisumu Boys High School, Cause No. 181 of 2015**.

Under section 74 of the Employment Act, the respondent should have submitted the work records. Failure to do so removed the burden of proof from the appellant to the respondent. The employment contract that required the appellant to work overtime without compensation was unlawful and unenforceable as held in **Five Forty Aviation Limited v Erwan Lanoë [2019] eKLR**.

For work during public holidays, these were pleaded and should be awarded together with costs.

The respondent submitted that the judgment of the trial court should be confirmed and the appeal dismissed with costs.

The respondent called its witness and, under cross-examination, confirmed that he had written authority to testify. Although the letter of authority to testify was not filed, it cannot technically be used to exclude his evidence.

Regarding the claim for unpaid leave, it was waived. It cannot be reinstated on appeal.

Regarding overtime, such a claim must be made in accordance with the provisions of section 90 of the Employment Act (the Act), as held in **Riley Falcon Security Services Limited v Okwaro [2025] eKLR**. A claim for overtime must be addressed within 12 months from the date of cessation.

Regarding public holidays, these were not stated. A general claim cannot be allowed, as held in **Patrick Lumumbasa Kimunyu v Prime Fuels (k) Limited [2018] eKLR**.

The respondent filed the necessary work records, and a contract of service was issued. The parties were regulated by the terms thereof.

Determination

This is a first appeal, and the court is required to review the record, reassess the finding and make its conclusions.

The main issues for determination are:

Whether the respondent witness was authorised to testify;

Whether the contract dated 30 March 2015 and the Wage Orders were applied correctly;

Whether the claims for public holidays and overtime were properly analyzed, and

Who should pay costs.

In addressing the response before the trial court, the respondent called Musa Katsutsu, the general manager, as a witness. Upon cross-examination, the witness confirmed that he was the general manager and authorised to testify.

The matter was left to rest.

An employer is defined under section 2 of the Act to include the agent of the employer. Musa Katsutsu, having confirmed under oath that he was the respondent's general manager, discharged his duty as a witness without challenge.

Regarding 30 March 2015 and the Wage Orders, the parties were regulated under a written contract. Such were the terms and conditions of employment. The appellant was a security guard as defined under his contract.

The role of a security guard is regulated under the **Regulations of Wages (Protective Security Service) Order, 1998**. Work hours, days of rest, payment, and other work benefits are addressed in the Wage Orders. Parties are allowed to enter into contracts of service based on the minimum terms of the Wage Orders and not below.

Under the Regulations of Wages (Protective Security Service) Order, 1998, an employee may work 52 hours over 6 days in a week, with a rest day under section 27 of the Act. A contract of service that permits a security guard to work 72 hours without compensation is unlawful and invalid. Such cannot be applied to deny the employee his rights secured under section 45(4) of the Act.

The respondent submitted that the appellant worked a 12-hour shift each day, spread over 6 days per week. There are no work records on how the respondent paid for the 20 extra work hours each week. There is a statutory requirement under section 74, read with section 10(6) and (7), for the employer to produce such work records.

However, even where such a right to be paid for overtime and extra work each day and for accumulated monthly overtime, the employee is required to address these claims within the meaning of section 90 of the Act. File his claim within 12 days from the date of cessation.

The appellant's employment contract lapsed on 31 August 2020. He filed his claim on 13 July 2022. The claim for overtime pay is time-barred under section 90 of the Act. See **Rift Valley Railways (Kenya) Ltd v Hawkins Wagunza Musonye & another [2016] KECA 213 (KLR)** and the case of **The German School Society & another v Ohany & another [2023] KECA 894 (KLR)** that benefits such as allowances in housing, overtime and work hours accrue daily, weekly or monthly and must be addressed within the meaning of a continuing injury under section 90 of the Act.

On the claim for pay for working during public holidays, these are special days gazetted by the Minister. Each day at work must be particularised, and a general claim in this regard cannot suffice.

The learned magistrate, although for different reasons, addressed the claim and made proper findings, dismissing it. For these reasons, costs are due to the respondent.

Accordingly, the appeal is without merit and is hereby dismissed. Costs to the respondent.

Delivered in open court at Mombasa, this 4th day of December 2025.

M. MBARŪ
JUDGE

In the presence of:

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and

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