



**Onyango v Riley Falcon Security Services Ltd & another (Cause E071 of 2024) [2026] KEELRC 659 (KLR) (9 March 2026) (Judgment)**

Neutral citation: [2026] KEELRC 659 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE E071 OF 2024  
NZIOKI WA MAKAU, J  
MARCH 9, 2026**

**BETWEEN**

**GEORGE CLEMENT ONYANGO ..... CLAIMANT**

**AND**

**RILEY FALCON SECURITY SERVICES LTD ..... 1<sup>ST</sup> RESPONDENT**

**KISUMU COUNTY OCCUPATIONAL SAFETY AND HEALTH OFFICER  
(ACTING FOR AND ON BEHALF OF THE DIRECTOR OF SAFETY AND  
OCCUPATIONAL HEALTH SERVICES) ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The Claimant instituted these proceedings via an amended statement of claim dated 13<sup>th</sup> December 2024 seeking the following reliefs:
  1. A declaration that the re-assessment by the 2<sup>nd</sup> Respondent dated 28<sup>th</sup> August 2023 was undertaken irregularly, arbitrarily and without cogent supporting evidence and is therefore null and void ab initio;
  2. A declaration that the assessment by the 2<sup>nd</sup> Respondent dated 6<sup>th</sup> July 2023 was lawful and proper and should therefore be upheld;
  3. Consequent to prayer (2) above judgment be entered against the 1<sup>st</sup> Respondent for Kshs. 501,501/- with interest thereon at Court rates from 6<sup>th</sup> July 2023 till payment in full;
  4. Payment of Kshs. 2,027,403.11 being unpaid overtime, salary, annual leave, gratuity, public holidays and refund of uniform deposit;
  5. Costs of the suit; and
  6. Interest on items (3), (4) and (5).



2. In support of the claim, the Claimant contends that he was employed by the 1<sup>st</sup> Respondent as a night watchman on 10<sup>th</sup> May 2016 and served diligently until 8<sup>th</sup> November 2023 when he tendered his resignation. He avers that on the 6<sup>th</sup> September 2023 the 1<sup>st</sup> Respondent purported to present another contract altering his terms of employment from permanent to contract status with the intention of denying him gratuity. In view of the foregoing and on the strength of the terms in the employment letter, the provisions of the Employment Act and the applicable Regulation of Wages Orders, the Claimant asserts that he is owed the following sums: Kshs. 1,195,521.60 in overtime; Kshs. 462,409.72 in unpaid off days; Kshs. 113,564.55 in unpaid annual leave; Kshs. 78,621.30 in gratuity/severance pay; Kshs. 18,000/- being refund of uniform deposit; Kshs. 15,141.94 in unpaid salary for August 2023; and Kshs. 144,144/- for work done during public holidays, bringing the total claim to Kshs. 2,027,403/-.
3. The Claimant further avers that on 23<sup>rd</sup> July 2019 he was involved in an accident while in the course of employment, which he duly reported to the 2<sup>nd</sup> Respondent. Following the accident, he received treatment at Jaramogi Oginga Odinga Teaching and Referral Hospital (JOOTRH), where he was diagnosed with a mandibular fracture that resulted in the loss of three upper incisors and four lower incisors, leading to an assessment of 30% permanent incapacity. Based on the discharge summary from JOOTRH, he contends that the 2<sup>nd</sup> Respondent assessed compensation payable at Kshs. 501,501/- and communicated this to the 1<sup>st</sup> Respondent on 6<sup>th</sup> July 2023. According to the Claimant, no objection was raised to the assessment as required under the Work Injury Benefits Act (WIBA), and he therefore legitimately expected payment of the assessed amount.
4. Subsequently, he avers that he was required to attend a second medical examination by Dr. James Obondi Otieno the results of which were not immediately communicated to him. He states that he was later surprised to learn, upon visiting the offices of the 2<sup>nd</sup> Respondent, that the initial assessment had been revised downward to Kshs. 250,747.20 with 15% incapacity based on the second medical report and at the request of the 1<sup>st</sup> Respondent on 28<sup>th</sup> August 2023. Following the reassessment the Claimant avers that the compensation process stalled despite a demand letter he issued on 24<sup>th</sup> July 2024. Upon eventually obtaining the second medical report dated 10<sup>th</sup> July 2023, the Claimant states that he discovered it was based on the loss of three lower incisors rather than four as indicated in the initial report. He therefore contends that the reassessment was undertaken without affording him a hearing or notifying him of the decision, leaving him with no option but to seek redress before this court.
5. In response, the 1<sup>st</sup> Respondent filed an amended response to the claim dated 11<sup>th</sup> February 2025. It generally denied the averments contained in the amended statement of claim and invited the Claimant to strict proof thereof. Nevertheless, it acknowledged that the Claimant was employed on yearly contracts renewable upon application and at the 1<sup>st</sup> Respondent's discretion. According to the 1<sup>st</sup> Respondent the first contract commenced on 1<sup>st</sup> May 2016 and expired on 30<sup>th</sup> April 2017 while the last commenced on 6<sup>th</sup> September 2023 and ended on 6<sup>th</sup> September 2024. It therefore urged the court to dismiss the suit with costs. The 2<sup>nd</sup> Respondent also filed a response dated 17<sup>th</sup> March 2025. It stated that the accident occurred on 24<sup>th</sup> July 2019 and not 23<sup>rd</sup> July 2019 as alleged by the Claimant. It further averred that any appeal against its decision of 28<sup>th</sup> August 2023 ought to have been lodged before 28<sup>th</sup> October 2023. While acknowledging that it carried out an assessment and issued an award, the 2<sup>nd</sup> Respondent generally denied the other averments contained in the amended statement of claim and similarly invited the Claimant to strict proof. It also prayed that the suit be dismissed with costs.
6. At the hearing, the Claimant testified on his own behalf while each of the Respondents called one witness. The Claimant adopted his witness statement dated 10<sup>th</sup> September 2024 as his evidence in chief and produced the documents contained in his list of the same date. He acknowledged that



he was engaged on yearly contracts and worked for a period of seven years and six months. It was his testimony that he worked from 6.00a.m. to 6.00p.m. without payment for overtime and that he was entitled to 52 rest days annually which were never compensated. During cross-examination, the Claimant acknowledged that he had proceeded on leave on two occasions, namely between 10<sup>th</sup> August 2021 and 8<sup>th</sup> September 2021 and between 4<sup>th</sup> July 2023 and 2<sup>nd</sup> August 2023. He also conceded that his September 2023 payslip reflected leave pay of Kshs. 17,413/-. The Claimant further admitted that he had received overtime payments on some occasions though not consistently. With regard to public holidays, he acknowledged that he had not particularised all the days worked. On gratuity, he confirmed that it was not provided for in his contract and that the employer made contributions to NSSF. He also admitted that he had not produced documents to support the claim for refund of contributions. The Claimant, however, maintained that the reassessment of the compensation award was never communicated to him, which explained why he did not lodge a complaint. The Claimant thereafter closed his case.

7. On behalf of the 1<sup>st</sup> Respondent, Ms. Lilian Mundu, the Human Resource Manager testified. She adopted her statement dated 4<sup>th</sup> March 2025 as her evidence in chief and produced the documents in the list dated 12<sup>th</sup> March 2025. In a nutshell she stated that the 1<sup>st</sup> Respondent accepted the Claimant's resignation on 10<sup>th</sup> November 2023 and after clearance, paid all his dues as evinced by the final dues clearance dated 11<sup>th</sup> November 2023. She further stated that the Claimant had been fully paid overtime, salary, rest days, leave, gratuity, uniform deposit and salary arrears as reflected in the payslips produced. With respect to the accident, she testified that upon receiving the initial assessment of Kshs. 501,501.02 and 30% incapacity it forwarded the DOSH 4 form to its insurer for payment. However, the Insurer arranged for a second medical examination based upon which it requested the 2<sup>nd</sup> Respondent to review the assessment. This resulted in reassessment of the award to Kshs. 250,747.20. She further testified that the insurer did not process payment because the Claimant failed to provide the necessary medical receipts and a police abstract. During cross-examination, she acknowledged that the second medical report was not sent to the Claimant and clarified that the accident in question was a road traffic accident rather than an occupational accident.
8. On behalf of the 2<sup>nd</sup> Respondent, Mr. Edward Midimu, the Kisumu County Occupational Health and Safety Officer, testified. He adopted his witness statement dated 17<sup>th</sup> March 2025 as his evidence in chief and produced the notice of accident, the letter from the 1<sup>st</sup> Respondent requesting reassessment and the second medical report. Upon cross-examination, he stated that since the accident occurred outside the scope of work, it ought to have been investigated by the police and supported by a police abstract. He further testified that the reassessment was undertaken after comparing the two medical reports and finding that the first report lacked sufficient detail. According to him, the Claimant had also healed to some extent, which explained the reduction of incapacity to 15%. With that testimony, the Respondents closed their respective cases and the parties subsequently filed written submissions.

### **Claimant's Submissions**

9. The Claimant identified the following issues for determination:
  - a. Whether he suffered a compensable occupational accident;
  - b. Whether the initial medical examination should abound resulting in the compensation quantification of 6<sup>th</sup> July 2023;
  - c. Whether the second medical report dated 10<sup>th</sup> July 2023 and the resultant reassessment were unlawful;



- d. Whether he is entitled to terminal dues; and
  - e. Who should bear costs.
10. On the first issue, the Claimant submitted that the 2<sup>nd</sup> Respondent was estopped from retroactively reclassifying the accident as non-occupational. He asserted that having already carried out due process and come up with the assessment including investigations under section 23 of WIBA, the 2<sup>nd</sup> Respondent could not turn around at this late stage to conclude that the accident did not occur in the course of employment.
  11. On the second issue, the Claimant maintained that the initial assessment dated 6<sup>th</sup> July 2023 was binding since no objection was raised. He relied on the evidence of the 2<sup>nd</sup> Respondent acknowledging that no objection had been lodged against the assessment. The Claimant further submitted that the letter dated 28<sup>th</sup> August 2023 requesting reassessment did not amount to a valid objection since it was never served upon him.
  12. On the lawfulness of the second medical report, the Claimant averred that it was factually inaccurate to the extent that it indicated the loss of three lower incisors instead of four as reflected in the initial report. He submitted that the loss of teeth in an adult is permanent and cannot “heal” over time. Consequently, the reduction of the degree of incapacity from 30% to 15%, and the corresponding reassessment of the award to Kshs. 250,747.20, was fundamentally flawed. In any event, the Claimant contended that even if the reassessment were accurate, it could not stand in the absence of a valid objection to the initial award.
  13. Regarding the claim for terminal dues, the Claimant submitted that he was entitled to the same on account of his continuous service for a period of seven years and six months. He asserted that although he was engaged on yearly contracts, the 1<sup>st</sup> Respondent’s conduct in making statutory deductions and paying house allowance demonstrated the existence of an ongoing employment relationship. In support of this proposition, he relied on *Emily Migwa v Seventh Day Adventist Church Central Kenya Conference (CKC) & another* [2020] KEELRC 379 (KLR), where the court held that despite being formally engaged on fixed-term contracts, an employee may still be entitled to accrued contractual and statutory benefits where the evidence demonstrates continuous employment. The Claimant therefore urged the court to allow the claim as prayed.

### **1<sup>st</sup> Respondent’s Submissions**

14. On its part the 1<sup>st</sup> Respondent identified the following issues for determination:
  - i. Whether the suit as pleaded, is competent in light of the statutory dispute resolution framework under WIBA;
  - ii. Whether the court can, in adoption/enforcement proceedings, invalidate the director’s reassessment and reinstate the earlier assessment;
  - iii. Whether the claims for leave/underpayment are properly before court within an adoption/enforcement cause, and if so, whether the Claimant is entitled to them; and
  - iv. Who should bear the costs of the proceedings.
15. On the first issue, the 1<sup>st</sup> Respondent submitted that after receiving the initial assessment it sought a review which culminated in the reassessment dated 28<sup>th</sup> August 2023 reducing the award to Kshs. 250,747.20. It asserted that this reassessment remains the operative award since the Claimant did not lodge an objection under section 51 of WIBA. Furthermore, the 1<sup>st</sup> Respondent maintained that



the Claimant's prayer of reinstatement of the previous assessment constitutes an appeal, which the Claimant never filed in accordance with WIBA. Consequently, the 1<sup>st</sup> Respondent submitted that this court lacks jurisdiction to entertain the claim. It relied on *Mutuku v Excel Chemicals Limited* [2025] KEELRC 1035 (KLR), where the court stated:

“The court holds that the jurisdiction to deal with any grievance on the award/decision by the Director of Occupational Safety and Health (DOSH) can only be invoked under section 52 of WIBA. The role of the court adopting awards does not include making a decision on the validity of the award where there is more than one award like in the instant case. Any party dissatisfied by the decision of the director is required to file objection to the DOSH as per section 51 of WIBA. The court holds that it lacks jurisdiction to decide on issues of contradictory awards under a miscellaneous application as that would be outside its given appellate jurisdiction under section 52 of WIBA.”

16. Further supporting its position, the 1<sup>st</sup> Respondent submitted that the court could not enter judgment on the earlier assessment of the 29<sup>th</sup> March 2022 as if it was the final award yet the reassessment of the 28<sup>th</sup> August 2023 was in existence. It maintained in the absence of an objection or an appeal the court could not pick and choose which between the director's awards to adopt and enforce. According to them the reassessed award was the rightful one, hence it urged the court to adopt it if at all it was minded to enforce any award. Moreover, it urged the court to disregard the Claimant's assertion that he was unaware of the revised award, noting that he attended the second medical examination and was informed of the reassessment by the 2<sup>nd</sup> Respondent.

17. On the claim for employment dues, the 1<sup>st</sup> Respondent submitted that the claims for overtime, leave and other benefits cannot be pursued within the present proceedings, which essentially seek enforcement of a DOSH award. It argued that such claims ought to be pursued through a substantive claim. In support of this position, it relied on *Kitoo v Apex Steel Limited (Cause E868 of 2021)* [2023] KEELRC 528 (KLR), where the court held:

“A reading of the WIBA leaves no doubt in my mind that the jurisdiction of this court to entertain work injury and occupational disease claims arises only after the Director has examined the claims and pronounced himself on them. The jurisdiction of the court in the premises, is appellate in nature. The court has no original jurisdiction over these claims.”

18. However, the 1<sup>st</sup> Respondent submitted that should the court be of a different view, it should decline the claim for overtime, public holidays and off days on account of lack of particulars. It asserted that the Claimant failed to specify the dates on which he allegedly worked overtime or during public holidays. Reliance was placed on *Osota Paul Osiemo v Intersecurity Services Ltd* [2021] eKLR, where a similar claim was dismissed for lack of evidence. The 1<sup>st</sup> Respondent further pointed to the payslips produced in evidence which, demonstrated that the Claimant was paid overtime and holiday dues. It also contended that claims spanning over seven years were time-barred under section 90 of the *Employment Act*.

19. Regarding unpaid leave, the 1<sup>st</sup> Respondent similarly argued that the claim was time-barred and unsupported by evidence. It maintained that the Claimant's yearly contracts were independent and that any claim relating to leave ought to have been pursued within the statutory limitation period. In support of its position, it relied on *Raymond Maluki v Fatuma Wambui Kamau & 2 others* [2017] eKLR, *Osota Paul Osiemo v Intersecurity Services Ltd* [2021] eKLR, and *Josphat Ingosi Andulu & another v Nightingale Rukuba* [2014] eKLR, in which the courts in similar circumstances held that leave accruals, off days and public holidays had been caught up by limitation of time, and had equally



not been proven by evidence. Furthermore, the 1<sup>st</sup> Respondent submitted that the pay slips it produced clearly showed that the Claimant proceeded on leave, referring the court to DEXH-7 and DEXH-9.

20. On gratuity and severance pay, the 1<sup>st</sup> Respondent submitted that the Claimant was not entitled to either benefit. It asserted that gratuity was not provided for in the contract of employment and that the Claimant was a member of NSSF, which excludes entitlement to service pay under section 35 of the *Employment Act*. It further submitted that severance pay is only payable in cases of redundancy under section 40 of the *Employment Act*. With respect to the claim for refund of uniform deposit, the 1<sup>st</sup> Respondent submitted that no contractual basis had been established and that the claim was similarly time-barred. In support of this argument, it relied on *David Ngala Ochieng v Hatari Security Guards (K) Limited* [2022] eKLR. In conclusion it urged the court to dismiss the suit with costs.

## 2<sup>nd</sup> Respondent's Submissions

21. The 2<sup>nd</sup> Respondent identified the sole issue for determination as whether the accident which occurred while the Claimant was riding his bicycle home from work constituted an occupational accident within the meaning of WIBA or was merely a traffic accident. The 2<sup>nd</sup> Respondent submitted that the accident which occurred while the Claimant was commuting home on his personal bicycle on a public road outside working hours did not constitute an occupational accident. It relied on section 3 of the WIBA and *Law Society of Kenya v Attorney General & another (Petition 4 of 2019)* [2019] KESC 16 (KLR). The 2<sup>nd</sup> Defendant further submitted that it was empowered to review and reassess compensation awards where new evidence emerges or where the initial assessment is based on incorrect facts. It relied on sections 23 and 52 of WIBA which empower the Director to investigate accidents, call for additional evidence and determine the appropriate compensation payable. Moreover, it averred that the reassessment was undertaken after consideration of the second medical report which was more detailed and accurately reflected the injuries sustained by the Claimant. It therefore maintained that the reassessment reducing the award to Kshs. 250,747.20 was lawful and justified, and urged the court to so find.

## Disposition

22. The Court is to determine two issues mainly. The award under the *Work Injury Benefits Act* and the claim relating to employment proper. In respect to the WIBA claim, whereas the Claimant had a good case, he moved the court rather late as he did not object to the reassessment which reduced his compensation by using illegal parameters such as undocumented injuries. Because the Claimant slept on his rights the Court is hamstrung to interfere with the second assessment which must be settled as the sum the 1<sup>st</sup> and 2<sup>nd</sup> Respondents conspired to pay to the Claimant for injuries he sustained. The Claimant must be paid Kshs. 250,747.20 within 14 days of the Judgment herein failing which the sum is to attract interest at 14% pa from the date of filing suit until payment in full.
23. On the balance of the claim, it is common ground that the employment was terminated by the resignation of the Claimant. He asserts he was entitled to overtime pay and leave pay as well as a host of other claims. Under the applicable Wages Guidelines, the Claimant was entitled to pay for gratuity. However, since he retired, he was not entitled to it. He had an amount claimed as uniform deposit. That sum is payable as the Kshs. 18,000/- was paid for uniform that the Claimant is entitled to a refund of uniform deposit. The Respondent as employer should have provided proof of the payment of salary and allowances as the employer is the one who keeps the record. The Claimant is entitled to pay for August 2023 which is Kshs. 15,141.94. For work done during public holidays, there was lack of particulars.



24. Similarly, as regards, overtime pay, he did not particularise his claim as to permit the Court to grant him relief in this respect. On leave, he admittedly went on some leave and the Court is unable to ascertain the unpaid leave dues for the Claimant. In the final analysis I find the Claimant was partly successful and award the following reliefs:-
- a. Kshs. 250,747.20 being the uncontested WIBA claim.
  - b. The sum in (a) above be paid within 14 days of today failing which the Respondents will be liable to pay the sum together with interest at 14% per annum from the date of filing suit till payment in full.
  - c. Salary for August 2023 – Kshs. 15,141.94
  - d. Kshs. 18,000/- for uniform deposit.
  - e. Costs of the suit.
  - f. Interest on the sums in (c) and (d) above at Court rates from the date of judgment till payment in full.

Orders accordingly.

**DATED AND DELIVERED AT KISUMU THIS 9<sup>TH</sup> DAY OF MARCH 2026**

**NZIOKI WA MAKAU, MCIARB.**

**JUDGE**

