



REPUBLIC OF KENYA

IN THE CHIEF MAGISTRATE'S COURT AT NAKURU

EMPLOYMENT & LABOUR RELATIONS CAUSE NO E204 OF
2025

GIDEON

KIPCHUMBA

KURGAT.....CLAIMANT

VS

KABARAK

UNIVERSITY.....RESPONDENT

JUDGMENT

INTRODUCTION

1. The Claimant filed a Memorandum of Claim, through which he sued the Respondent for unfair labour practices while in a fixed term employment contract with the Respondent. The Respondent filed a Response to Memorandum of Claim denying the claims. The case was heard on 16th October

2025 with Mr. Mwallo appearing for the Claimant and Mr. Opondo appearing for the Respondent. The Claimant testified on his own behalf and the Respondent's Registrar in charge of Administration and Human Resources, Prof. Simon Kipchchumba testified for the Respondent.

2. The claimant and the witness both sought to rely on their witness statements which they asked the court to adopt as part of their evidence in chief. They also produced the list and bundle of documents filed together with their pleadings as exhibits before court. Both parties then filed written submissions.

THE CLAIMANT'S CASE

3. According to the Memorandum of Claim, the Claimant was, employed by the Respondent as a Night Security Guard. As correctly summarized by his learned counsel on record, his claim is premised on 4 principal allegations:

- a. That his employment was unlawfully terminated through the non-renewal of contract.

- b. That he worked excessive hours (72 hours per week) without overtime compensation.
 - c. That he was denied annual leave, leave travelling allowance, and payment for public holidays worked.
 - d. That the Respondent failed to pay terminal dues and issue a Certificate of Service.
4. On this basis, the Claimant sought cumulative monetary reliefs amounting to Kshs. 167,444.95, together with interest and costs. **THE RESPONDENT'S CASE**

5. The Respondent's in its response denied the claim herein as follows:

- a. That the Claimant was employed on successive fixed-term contract, initially from 24/08/2021 to 31/08/2022, and subsequently renewed for a further two-year fixed term from 01/09/2022 to 31/08/2024.
- b. That the employment relationship lawfully concluded by effluxion of time, following a notice of non-renewal dated 27/05/2024, which did not amount to termination.
- c. That the Claimant worked strictly within the limits prescribed under the Regulation of Wages (Protective

Security Services) Order, and that duty rosters confirm that no overtime beyond the statutory maximum was worked.

d. That the Claimant utilized his annual leave, had no leave balance at exit, and was paid leave allowance as reflected in payroll records.

e. All terminal dues were fully paid, clearance undertaken, and both a Certificate of Employment and Employee Discharge Voucher duly issued and signed by the Claimant.

6. The Respondent therefore prays for the dismissal of the Claim. **FINDINGS AND DETERMINATION**

7. At the close of the hearing and submissions, it became common ground that this is not a claim of unfair termination, but that parties herein are in agreement that the Claimant herein was engaged by the Respondent as a night security guard for a fixed term period of slightly over 3 years. That his contract was not renewed upon expiry. There is thus no issue of unfair cessation of the contract as pleaded.

8. The claim herein, as introduced hereinabove, mainly rests on unfair labour practices, that the Claimant claims he was subjected to during the period of the contract. The main issue for determination in this case is therefore, whether the claimant is entitled to payment for accrued and unpaid leave days, leave travelling allowances, public holidays worked, unpaid overtime compensation and whether the Respondent lawfully discharged its statutory obligation upon cessation of employment.
9. The starting point for the claims herein is the provision of Section 74 of the Employment Act which places a mandatory duty on the employer to keep and produce employment records demonstrating compliance with statutory obligations relating to leaves, hours worked, overtime and remuneration paid. As correctly submitted by the learned counsel for ten Claimants, Courts have consistently held that where an employer fails to produce such records, it cannot dispute an employee's pleaded terms of employment. That was the holding by the Employment and Labour Relations Court, in **WAFULA VRS GURDIT SINGH SHOP [2022] e KLR.**

10. I have gone through the records herein. I find that **DEXH. No. 8** is clear that the Claimant was issued with a **Certificate of Employment** dated 19/09/2024. His claim for issuance of a Certificate of Service therefore fails for this reason.
11. **DEXH. No. 9** is also clear proof that the Claimant was paid **terminal benefits** in form of salary up to and including 31/08/2024. The **computation** of the same was done through **DEXH. Nos.10** and **11**. The claimant was then formally **cleared** and **discharged** vide **DEXH. Nos. 12** and **13**. Furthermore, the **pay slip** produced as **DEXH. No. 15** proves that the Claimant had NSSF contribution. He was thus in a recognized pension scheme. I thus do find that the Respondent duly complied with its statutory obligations and properly discharged the claimant herein upon cessation of employment.
12. I also do find that he is not entitled to annual leave pays because he did not provide evidence that he did apply for the annual leaves and was denied. Employees can only go on leave upon application. On this point, an employer cannot be compelled to produce a leave application form where none

was submitted in the first place. There is however evidence in the pay slip (DEXH. No. 15) that Kshs. 4000/- was paid to him, in the month of January 2023. Thus his claim for Leave or any related claim is therefore not awardable.

13. As for overtime and unpaid work on public holidays, I find the records submitted by the Respondent, in response to the same not clear and hence meaningless. They are **rooster (DEXH. No.14)**. Going by the authority in **WAFULA VRS GURDIT SINGH SHOP, supra**, I find that there is no sufficient evidence tendered by the Respondent to rebut the Claimant's claim that he was subjected to work excessively without payment for overtime, and non-compensation for work done during public holidays. I thus do hereby **Kshs. 24,964.75** for unpaid public holidays, and Kshs **129,071.70** for unpaid overtime hours worked. There was no claim for overtime in the prayers in his Memorandum of Claim. All his other claims as pleaded in his memorandum of claim are however hereby dismissed.

14. For the above reasons, this court enters judgment for the claimant in the following terms: -

