



REPUBLIC OF KENYA



**Rono v Lavington Security Ltd (Employment and Labour Relations Cause  
163 of 2021) [2026] KEMC 46 (KLR) (12 February 2026) (Judgment)**

Neutral citation: [2026] KEMC 46 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 163 OF 2021  
PA NDEGE, SPM  
FEBRUARY 12, 2026**

**BETWEEN**

**WESLEY CHERUIYOY RONO ..... CLAIMANT**

**AND**

**LAVINGTON SECURITY LTD ..... RESPONDENT**

**JUDGMENT**

1. By a memorandum of claim dated 26/05/2021, the claimant sought the following reliefs against the respondent: -
  - a. 1 month's gross salary in lieu of notice – Kshs. 14,401.10
  - b. 12 months gross salary for compensation based on section 49 (1) (c) of *Employment Act* 2007 – Kshs. 172,813.20
  - c. Underpayments dues – Kshs. 259,701.90
  - d. Normal overtime dues – Kshs. 396,121.40
  - e. Off duties dues – Kshs. 345,942.85
  - f. Public holiday dues – Kshs. 88,027.00
  - g. Leave dues – Kshs. 43,412.00
  - h. Costs of this suit.
2. The Respondent filed a statement of response dated 01/12/2021 denying the claim herein. In its defence, it alternatively pleaded that the claimant herein absconded and or deserted duties after being issued with a notice to show cause letter which he never responded to, only to reappear 3 months later, seeking for redeployment.



3. Evidence was led by the claimant that he was verbally employed in April 2016 as a day watchman a fact which was corroborated by DW1, save that he produced a written contract of the said employment. It was the claimant's evidence that he made a request on 24/04/2021 to the respondent to be granted of duty on 30/04/2021 so as to enable him attend to an emergency at home. That the respondent did not object to his request. That he did not therefore attend work on the aforementioned date as per the permission. That on the same day, he instead received a call from the respondent's controller, a Mr. Koech, informing him that his employment had been terminated. He testified that he was underpaid, not granted off duties save for 4 days off duties granted in the month of December 2020 and that he used to work during public holidays and was not paid on a double rate as required. Further that he worked continuously for a period of 5 years and was only granted 1 annual leave of 21 days in the year 2017.
4. Evidence was led by DW1 that prior to the termination of the claimant's employment, he had been issued with several warning letter which were produced herein as DEXH. NO.6. It was however his evidence that the claimant was not terminated on the strength of the warning letters, but that he deserted duty. Further evidence was led by DW1 that a show cause letter dated 24/04/2021 was addressed to the claimant.
5. During cross-examination, DW1 however confirmed that there was no proof of acknowledgement of receipt of the show cause letter. He confirmed that the claimant's signature on the show cause letter was missing. The show cause letter was produced as DEXH. NO. 7. It was his further evidence that the respondent attempted to call the claimant via phone calls but that he could not be reached. During cross-examination, he however confirmed that he has not produced the call logs as evidence of the calls.
6. That the claimant who was an employee of the respondent is no longer working with the respondent is not in doubt. Thus applying the reveres burden of proof provided for under section 47 (5) of the [Employment Act](#), the burden was on the Respondent to justify that the separation with the claimant, its employee, was procedurally and substantively justified and fair. I find that, based on the evidence herein, the respondent has not been able to discharge this burden. It has thus failed to prove that the claimant herein was a deserter. I thus find his termination herein to be unfair and unjustified.
7. As to the relief sought, I shall start with 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. 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 v Gurdit Singh Shop* [2022] e KLR.
8. I have gone through the records herein. I find that DEXH. No. 3 are clear that the Claimant was being underpaid. The relevant Wages order with the minimum wages were produced by the Claimant as exhibits herein. I thus find that the Claimant is entitled to the underpayments as sought.
9. DEXH. No. 5, are the leave application forms. Contrary to the claimant's counsel submissions on their validity, I find them to appear to be valid and on a balance of probability, they prove that the claimant applied for leave and that the applications were approved as required. The burden was on the claimant to prove that the signatures therein are not his. If they are forgeries, a serious criminal offence, then he even ought to have gone further and reported to the police for the employer to be investigated on that claim. Otherwise, I rely on them to find that his claim for unpaid leave appears doubtful and therefore fails for this reason.



10. As for overtime and unpaid work on public holidays, I find no records of the muster roll to confirm that the claimant did not work overtime or during public holidays. His claim under these heads therefore succeed. This is going by the authority in Wafula VRS Gurdit Singh Shop, supra, as I have found 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.
11. As to compensation for unfair termination, I shall consider the short period that the claimant herein worked for the respondent and the several warning letters herein which show that his work with the respondent was not that qualitative. Therefore in terms of quality and quantity, the claimant herein does not deserve 12 months compensation as sought for herein. For this reason, I shall compensate him a token of 0.75 month's salary in compensation.
12. For the above reasons, this court enters judgment for the claimant in the following terms: -
  - a. 1 month's gross salary in lieu of notice – Kshs. 14,401.10
  - b. 0.75 months gross salary for compensation based on section 49(1)(c) of *Employment Act* 2007 – Kshs. 10,800.80
  - c. Underpayments dues – Kshs. 21,601.65
  - d. Normal overtime dues – Kshs. 396,121.40
  - e. Off duties dues – Kshs. 345,942.85
  - f. Costs of this suit.

**DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 12<sup>TH</sup> DAY OF FEBRUARY, 2026**

**ALOYCE-PETER-NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**

In the presence of;

Claimant's Counsel: N/A

Respondent's Counsel: N/A

Claimant: N/A

