



**Too v Radar Limited (Appeal E021 of 2023)  
[2025] KEELRC 680 (KLR) (28 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 680 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
APPEAL E021 OF 2023  
J RIKA, J  
FEBRUARY 28, 2025**

**BETWEEN**

**MICHAEL KIBET TOO ..... APPELLANT**

**AND**

**RADAR LIMITED ..... RESPONDENT**

*(An Appeal from the Judgment and Decree of the Hon. Senior Resident Magistrate E.S. Soita, in Nakuru C.M.C. E&LRC Cause Number E219 of 2021, dated 27th June 2023)*

**JUDGMENT**

1. The Appellant lodged a Claim before the Trial Court against the Respondent, his former Employer, seeking a raft of remedies.
2. The remedies included notice, underpayment, overtime, annual leave, public holidays and compensation for unfair termination.
3. In a Judgment delivered on 27<sup>th</sup> June 2023, the Trial Court: [a] declared termination unlawful; awarded compensation equivalent of 1-month salary at Kshs. 16,794; notice at Kshs. 16,794; underpayment at Kshs. 22,671; and granted costs to the Appellant.
4. He appeals that decision, through his Memorandum of Appeal dated 27<sup>th</sup> June 2023. He lists 16 Grounds, which can be reduced to 2 Grounds: that the Trial Court erred by declining his prayers for overtime, off-duty days, and public holidays; and that the remedies of underpayment, annual leave and compensation granted by the Trial Court were inadequate.
5. He proposes that the Court grants the prayers for overtime, off-duty days and public holidays on appeal, as tabulated in his Submissions at the trial; and that the Court enhances the award of underpayment, annual leave and compensation.



6. Parties agreed to have the Appeal considered and determined on the strength of the Record of Appeal, and Submissions. They confirmed filing and exchange of Submissions at the last appearance before the Court, on 5<sup>th</sup> November 2024.

**The Court Finds: -**

7. There was no finding and order made by the trial Court in favour of the Appellant, on annual leave. The prayer was among others, which the Court found had not been established by the Appellant, and declined in their entirety.
8. There is no foundation to the prayer by the Appellant for enhancement of annual leave pay. None was granted by the Trial Court, to be enhanced on appeal.
9. He was granted underpayment at Kshs. 22,671. In his Statement of Claim, he did not plead any specific amount as underpayment of salary. He simply contended that he was underpaid.
10. In his Witness Statement which he adopted as his evidence, he similarly did not claim any specific amount of overtime.
11. He complains in his Memorandum of Appeal that the Trial Court erred, by combining the aspect of overtime with the prayers for off-duty days and public holidays.
12. But in his Witness Statement dated 3<sup>rd</sup> May 2022, he makes this combination himself, stating that, “the Respondent made us work overtime during our rest days and public holidays without offering a stipend or additional amount to the usual salary that we are paid...”
13. There was nothing in terms of evidence, placed before the Trial Court, to establish that the Appellant worked overtime.
14. He similarly did not place before the Court, evidence of work done by him during off-duty days and public holidays.
15. He left out evidence to support these prayers, in the mistaken belief, that he would make up for the evidential shortfall, through his Closing Submissions.
16. On cross-examination, he told the Trial Court that: -I have not pleaded what I was paid.I seek overtime. I have no documents to confirm overtime.I have not stated the off-days needed.I cannot remember the date I applied for annual leave.I have not stated the public holidays worked.I have no documents to confirm that I worked on public holidays.
17. On redirection, he explained that all relevant documents remained in the custody of the Respondent. He did not notify the Respondent to produce any of the relevant documents at the trial.
18. The Court of Appeal, in David Odhiambo Apel v. Telkom Kenya Limited [2016] e-KLR, held that Submissions are neither evidence, nor a replacement for evidence. The Trial Court could not grant the Appellant prayers based on his Submissions, and this Court cannot grant, or enhance the remedies as sought by the Appellant, on the strength of his Submissions.
19. He has not established why the Court should interfere with the Judgment of the Trial Court.

It is ordered: -

- a. The Appeal is declined.
- b. No order on the costs.



**DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU, THIS 28<sup>TH</sup> DAY OF FEBRUARY 2025.**

**JAMES RIKA**

**JUDGE**

Court Assistant: Emmanuel Kiprono

Maragia Ogaro & Company Advocates for the Appellant

Sharia Nyange Njuguna, Advocates for the Respondent

