



**SGA Security Solutions Limited v Kitsao (Appeal E002 of 2025)  
[2025] KEELRC 2315 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2315 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI  
APPEAL E002 OF 2025  
M MBARŪ, J  
JULY 31, 2025**

**BETWEEN**

**SGA SECURITY SOLUTIONS LIMITED ..... APPELLANT**

**AND**

**AMANI CHOGO KITSAO ..... RESPONDENT**

*(Being an appeal and cross-appeal from the judgment of Hon. M. S. Kimani delivered on 20 January 2025 in Mariakani CMELRC No. E026 of 2023)*

**JUDGMENT**

1. The appeal and cross-appeal arises from the judgment delivered on 20 January 2025 in Mariakani CMELRC No. E026 of 2023. The appellant is seeking that the award of overtime be set aside and substituted with an order dismissing the claim with costs.
2. The grounds of appeal are that the learned magistrate erred in law and fact in awarding the respondent overtime of Ksh. 872,820, yet this claim was without proof of working overtime without compensation. The award in overtime was excessive despite the appellant producing evidence that the respondent took his rest days. The overtime claimed was time-barred under Section 90 of the [Employment Act](#) and hence should not have been awarded.
3. In cross-appeal, the respondent claim is that the learned magistrate erred in law and fact in failing to award his claim for unpaid allowances and remuneration during public holidays on the basis that these were continuing injuries and should have been addressed within 12 months from the date of cessation. the trial court erred in failing to award house allowance on the basis that this was a continuing injury and was not addressed within 12 months from the date of cessation.
4. On the appeal and cross-appeal, the facts giving rise of the judgment was a claim filed by the respondent on the basis that he was employed by the appellant on 1 march 2013 as a security guard. He resigned



on 30 November 2021. At the time, the respondent was earning Ksh.16,185 per month. He was not paid his terminal dues and hence claimed the following;

- a. Accrued leave pay of 104 days ksh.117,495
  - b. Public holidays of 94 days worked from 2013 to 2021 at Ksh.121,368
  - c. Overtime of 4 hours each day Ksh.872,820
  - d. House allowance for 104 months Ksh.261,846.
5. In reply, the appellant admitted that the respondent was employed as a security guard on 1 March 2013 and he resigned on 30 November 2021. There are no unpaid termination dues as alleged. The claims made for annual leave are not due since the respondent took all annual leave days and during public holidays, he was not at work. There was no overtime worked, and the claims made are without proof. The due house allowance was paid in full.
6. In the judgment, the learned magistrate held that the appellant presented leave application forms which confirmed the respondent had taken all due leave days. However, for overtime worked, there was no pay and hence awarded Ksh.872,820. The claims for work during public holidays were dismissed for being time-barred and filed contrary section 90 of the *Employment Act* (the Act) as these were assessed to be continuing injuries and should have been addressed within 12 months from the date of cessation. The claim for house allowance was not addressed.
7. The appellant submitted that the award of overtime at Ksh . 872,820 was not justified. There was no evidence that the respondent worked daily from 6am to 6pm and hence earned 4 overtime hours. Without evidence as required under section 107 of the *Evidence Act*, such claims should have been dismissed. In the case of *Springboard Capital Limited v Njenga & another Civil Appeal No. 14 of 2024* and the case of *Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & another* [2005] EA, the courts have held that under section 107 of the *Evidence Act*, a party who alleges must prove.
8. In this case, the claims made are time-barred under section 90 of the Act and should not be allowed, as held in *Wariahe v Teachers Service Commission* [2023] eKLR.

### Determination

9. As the first appellate Court, the court is enjoined to revisit the evidence on record, evaluate it and reach its conclusion in the matter. See the case of *Selle & Ano. v Associated Motor Boat Co. Ltd* (1968) EA 123. Nevertheless, the court appreciates the settled principle that an appellate Court will not ordinarily interfere with findings of fact by the trial Court unless they were based on no evidence at all, or a misapprehension of it or the Court is shown demonstrably to have acted on wrong principles in reaching the findings. This was the holding in *Mwanasokoni -versus- Kenya Bus Service Ltd.* (1982-88) 1 KAR 278.
10. It is not contested that the respondent worked for the appellant from 1 March 2013 to 30 November 2021 when he resigned. He was employed as a security guard earning Ksh. 16,185 per month. He claimed terminal dues including;
- a. Accrued leave pay for 8 years,
  - b. Public holidays worked for 8 years,
  - c. Over time worked for 8 years, and
  - d. House allowances for the 8 years.



11. On the claim for leave pay, the appellant submitted leave application forms for each years on the basis that the respondent took 26 leave days each year. In this evidence, the respondent denied taking any leave days and that he had not seen the records filed by the appellant in response before.  
The leave requests filed are clean and neat.
12. In 2021, the respondent is noted to have taken 26 leave days and approved on 1 June 2021.  
In 2020, the respondent took some 26 leave days.
13. The veracity of these records were not challenged during the hearing. The trial court addressed the records filed and having advantage of taking the evidence held that leave pay claimed was not due.  
These findings shall not be disturbed.
14. On the claim for public holidays worked, the respondent gave a detailed account of the public holidays worked each year. He testified that whenever a public holiday fell on the off day, he would be off duty.
15. However, the respondent failed to file any work records on how the respondent took the public holidays due. The particulars given and listed dates should have elicited a detailed response similar to the claims for accrued leave days.
16. The claimed public holidays accrued each year. They ought to have been addressed within the provisions of section 90 of the Act as held in *The German School Society & another v Ohany & another* [2023] KECA 894 (KLR) and the case of *Kenya Railways Corporation v Ododa & 216 others* [2024] KECA 1620 (KLR) that a claim, work benefit or allowances which accrues daily, weekly or monthly must be claimed within the provisions of section 90 of the Act as continuing injuries. Where he benefits relates to leave days accruing annually, monthly payments of a house allowance or public holidays, such must be addressed within 12 months form the date of cessation.
17. In this case, the respondent is entitled to claims for public holidays going back 12 months.
18. He filed his claim on 11 April 2023. For the 9 public holidays claimed before end of employment, such are dues.
19. On the last wage paid in 2021 at Ksh. 17,384.82, the daily wage being Ksh. 367 for work in Kilifi, the respondent is entitled to Ksh. 3,303 in public holidays.
20. On the claim for overtime pay, applying the same principles outlined above, without the work records showing how the appellant allocated the work hours to secure the respondent as a security guard, the evidence presented indicates that for the 6 days at work, 12 hours were worked, resulting in a total of 72 hours worked weekly. The overtime hours claimed are justified, and this should be assessed under Section 90 for 12 months only.
21. The 4 hours worked overtime at the rate of Ksh.67.80 per hour for Kilifi, total due Ksh.423,072.
22. The learned magistrate accurately assessed the overtime claim based on the Wage Orders applicable to the security sector, except for the period of application.
23. On the claim for house allowance, the payment statements filed indicate a wage of Ksh.17, 384.82 by 2021. The minimum wage for Mariakani in Kilifi was Ksh.12,522.70. The house allowance once due is Ksh. 1,878.30, total wage Ksh. 14,400.30.
24. The wage paid was over the allowed minimum. This took into account the house allowance once due.



25. Regarding costs awarded plus interest, the appeal addressed, and the cross-appeal factored in, each party should meet its own costs.
26. On the appeal and cross-appeal, the judgment in Mariakani CMELRC No. E026 of 2023 is reviewed, with the respondent being awarded accrued public holidays of Ksh.3,303 and overtime pay of Ksh.423,072. For the appeal and lower court proceedings, each party bears its costs.

**DELIVERED IN OPEN COURT AT MOMBASA, THIS 31ST DAY OF JULY 2025**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

.....and .....

