



**Muigai v Oak Place Hotel and Conference Centre (Cause
2334 of 2017) [2025] KEELRC 2178 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2178 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2334 OF 2017**

**L NDOLO, J
JULY 24, 2025**

BETWEEN

PATRICK RUKWAGAGI MUIGAI CLAIMANT

AND

OAK PLACE HOTEL AND CONFERENCE CENTRE RESPONDENT

JUDGMENT

Introduction

1. On 14th June 2017, the Claimant resigned from the Respondent's employment. He thereafter filed a claim against the Respondent, seeking payment of his terminal dues. The claim is stated in a Memorandum of Claim dated 16th November 2017. The Respondent filed a Response dated 1st March 2018.
2. At the trial, the Claimant testified on his own behalf but the Respondent elected not to call any witnesses. Both parties filed final submissions.

The Claimant's Case

3. The Claimant states that he was employed by the Respondent as a gardener in April 2015, earning a monthly salary of Kshs. 15,280. He was later promoted to the position of Guest Attendant, drawing a salary of Kshs. 18,000 as at 14th June 2017, when he resigned.
4. The Claimant avers that upon his resignation, the Respondent promised to process and pay him his terminal dues promptly and issue him with a certificate of service. He however states that he was made to wait for two (2) months, forcing him to make several demands before he was issued with a cheque for Kshs. 11,882 on 23rd August 2017, as terminal dues.



5. According to the Claimant, he was forced to work for an average of 14 hours daily, including weekends and public holidays, without overtime compensation. He therefore claims Kshs. 214,306.60 in overtime pay.
6. The Claimant further claims that he was not paid service charge, which he terms as a mandatory statutory pay for workers in the hotel industry.
7. The Claimant accuses the Respondent of refusing to issue him with a certificate of service.
8. The Claimant concludes that the Respondent's conduct amounts to unfair labour practices.
9. The Claimant therefore claims the following:
 - a. Damages for unfair labour practices;
 - b. An award of Kshs. 214,306.60 as unpaid overtime;
 - c. An amount of service charge to be ascertained;
 - d. Certificate of Service;
 - e. Costs plus interest.

The Respondent's Case

10. In its Response dated 1st March 2018, the Respondent states that the Claimant worked for it as a Gardener from August 2012, before being deployed as a Night Manager from 11th August 2016. According to the Respondent, the Claimant earned a monthly salary of Kshs. 20,000.
11. The Respondent avers that the Claimant informed the General Manager that he was resigning to go to Bible School in Limuru and would return for his terminal dues and certificate of service at a later date. The Respondent claims to have made several attempts to reach out to the Claimant but he was inaccessible.
12. The Claimant is said to have eventually collected his terminal dues on 22nd August 2017. He however did not collect his certificate of service, which was ready.
13. The Respondent denies that the Claimant worked overtime and states that as a Gardener, he worked from 8.00 am to 5.00 pm and as a Night Manager, from 6.00 pm to 2.00 am, six (6) days a week. The Respondent adds that the Claimant was granted his annual leave during the course of his employment.
14. The Respondent states that it catered for the Claimant's service pay through payment of his National Social Security Fund (NSSF) dues, in compliance with Section 35(6) of the [Employment Act](#). The Respondent further states that any claimed service charge was paid at a standard rate and was included in the Claimant's salary every month.
15. The Respondent asserts that it has settled the Claimant's terminal dues in full. The Respondent denies the Claimant's entire claim and asks the Court to dismiss it.

Findings and Determination

16. The Claimant's claim is made up of an award for overtime compensation in the sum of Kshs. 214,306.60 and service charge to be ascertained. The Claimant presented his tabulation on the claim for overtime compensation but did not establish the basis for the tabulation.



17. The law is settled that an employee claiming to have worked overtime bears the burden of laying before the Court evidence in support of their claim for compensation.
18. In *Rogoli Ole Manadiegi v General Cargo Services Limited* [2016] eKLR it was held that the fact that the employer is the custodian of employment records does not in any way absolve the employee from the burden of establishing hours and days worked in excess of the legal maximum.
19. An employee claiming overtime compensation is expected to avail documentary evidence of the actual hours and days worked beyond the normal working hours.
20. In *KUDHEIHA Workers v Charles Waithaka t/a Apple Bees Pub and Restaurant* [2013] eKLR the Court expressed its frustration at the lack of effort by employees to prove their claims for overtime compensation thus:

“There is tendency for Claimants seeking overtime pay to just throw all the public holidays in a calendar, all the hours beyond the agreed working hours on the clock, and all the years served, in the face of the Court and hope they make a credible case for overtime. Claimants of overtime must make a greater effort in directing the mind of the Court to a mathematically defensible, legally justifiable and factually credible system of overtime pay.”
21. The foregoing position has been upheld in a myriad other cases including; *Charles Nguma Maina v Riley Services Limited* [2018] eKLR; *Fred Makori Ondari v The Management of the Ministry of Works Sports Club* [2013] eKLR; and *Patrick Lumumba Kimuyu v Prime Fuels (K) Limited* [2018] eKLR.
22. In the present case, the Claimant fell into the same error of throwing figures at the Court, without supporting evidence. With regard to the claim for service charge, the situation is even worse as no figures were provided to the Court.
23. Employment claims in the nature of accrued dues fall within the broad category of special damages which must be specifically pleaded and proved.
24. The Claimant failed to achieve this standard and his entire claim therefore fails and is dismissed.
25. Each party will bear their own costs.
26. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF JULY 2025

LINNET NDOLO

JUDGE

Appearance:

Dr. Omondi Owino for the Claimant

Mr. Mugo for the Respondent

