



**Mangeti v East Afric Terminals Limited (Cause E084 of 2022)  
[2023] KEELRC 3072 (KLR) (16 November 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3072 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E084 OF 2022  
M MBARŪ, J  
NOVEMBER 16, 2023**

**BETWEEN**

**GAITANO OCHIENG MANGETI ..... CLAIMANT**

**AND**

**EAST AFRIC TERMINALS LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The hearing proceeded in the absence of the respondent on 11 October 2023 after the respondent was served and failed to attend court.
2. The claim is that the respondent employed the claimant as the operations supervisor at a salary of Ksh 88,080 per month. The claimant worked overtime, accrued leave days all at Ksh 998,479 less statutory deductions amount to Ksh 689,104.38 and which was not paid at the end of employment. The respondent prepared a payment for Ksh 136,987.64 which was paid without any explanation and therefore the sum of Ksh 552,116.74 is unpaid which is herein claimed together with costs.
3. The claimant attended and testified in support of his claim. That after working for the respondent, upon retirement in the year 2021 he got a term contract to train other employees at Ksh 50,000 per month and he would be paid through a cheque for his role as supervisor. He was to be paid monthly but he was only paid once and an amount of Ksh 689,104.38 remained unpaid.
4. In response, the respondent's case is that the claimant was paid his terminal dues of Ksh 136,897.64 which was his final payment. The respondent also paid him Ksh 285,437 in appreciation for services provided and the claims made are without merit and should be dismissed with costs.  
The respondent did not attend at the hearing.
5. At the close of the hearing, parties were directed to file written submissions. Only the claimant complied and reiterated his case and that the assertions by the respondent that they paid him Ksh



136,987.77 and Ksh 689,104.38 respectively is without explanation or evidence. The alleged payment in appreciation at Ksh 285,438 is not supported. Under Section 20 and 21 of the *Employment Act* the employer is required to submit a payment statement containing the gross salary and statutory deductions and which statement is not filed. The paid sum of Ksh 136,987.77 is also without any explanations and hence the sum of Ksh 552,116.74 is unlawfully withheld and should be awarded with costs.

### Determination

6. The claimant's case is that the respondent owes him Ksh 552,116.74 arising from terminal dues following his voluntary resignation. That during employment he had accrued overtime and leave pay among other benefits.
7. It is also the claimant's case that of the total terminal dues owed to him by the respondent at Ksh 998,497.21 less his loan repayment and statutory deductions, the net due was Ksh 689,104.38 but when the respondent tabulated his dues, he was only paid Ksh 136,987.64 without any explanations.
8. The respondent on their part assert that the claimant was paid all his terminal dues at Ksh 136,987.40 together with Ksh 285,437 in appreciation of his services to the company.
9. In evidence before court, the claimant testified that upon retirement from the company in the year 2021, he was offered a contract to train other employees at Ksh 50,000 per month and he would be paid through a cheque. He was only paid once and then a lump sum of Ksh 689,104.38.
10. The claimant attached the contract dated 25 November 2021 and indeed, he was sourced to undertake trainings at a net pay of Ksh 50,000.
11. The claim that he was owed overtime and leave pay is on the basis of a schedule attached to his claim with timelines from 26 April 2018 to 31 December 2018. This then became timelines within his employment before his voluntary resignation and contract dated 25 November 2021.
12. The claim with regard to accrued leave days is not particularized or gone into.
13. The claimant filed his claim on 31 October 2022. First, where the claimant remained in the service of the respondent until his resignation, any continuing injuries going back to 31<sup>st</sup> December 2018 ought and should have been addressed within the meaning of Section 90 of the *Employment Act*, 2007 (the Act). To sit back and wait until exit from employment, the claimant lost an important link to such claims. Secondly, even where the claimant did not claim for his alleged overtime and accrued leave days while in the service of the respondent, the particulars of such claims were important to address. The Schedule on alleged overtime worked are not approved by the employer. As the custodian of work records, where indeed the claimant was allowed to work overtime, the duty to address a continuing injury lost, to claim otherwise at the end of his employment, the schedule and work records should essentially be drawn from the records of the employer, which is not the case here. The long schedule of hours and the implications thereof is lost without approval or production by the employer.  
To claim overtime pay based on a general schedule is not sufficient.
14. To wait for period longer than 3 years so as to assert a claim for overtime or leave pay is to negate the rights available under Section 90 of *the Act*.



15. This assessment and findings is confirmed by the record filed by the claimant with regard to Payslip on final dues for December 2021 after he had resigned from his employment. The dues paid included the following;
- overtime pay nil;
  - 6 unpaid leave days Ksh 21,570.61;
  - 2 years and 11 months' gratuity Ksh 128,596.80 gross pay Ksh 150,167.41;
  - less deductions Ksh 13,179.64;
  - Net paid Ksh 136,987.77.
16. Which sum was deposited in the claimant's bank account and he confirmed receipt of Ksh 137,987.77 being the final payment of his terminal dues.
17. The claim thus that there was no explanation with regard to payment of terminal dues is not correct. On his own records, the total claim for 150,167.41 due in terminal dues is accounted for, the deductions effected and including various statutory payments. To claim outside these records and assert a claim for work injuries outside the limitation period is not justified.
18. Despite the respondent not attending at the hearing, the claim is hereby found without merit and is dismissed in its entirety. Each party to bear own costs.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 16<sup>TH</sup> DAY OF NOVEMBER 2023.**

**M. MBARŪ**

**JUDGE**

