



**Mohamed v Jomvu Gas Station (Cause 720 of 2015)
[2022] KEELRC 1710 (KLR) (22 July 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1710 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 720 OF 2015**

**B ONGAYA, J
JULY 22, 2022**

BETWEEN

KASSIM ABDALLA MOHAMED CLAIMANT

AND

JOMVU GAS STATION RESPONDENT

JUDGMENT

1. The claimant filed the memorandum of claim on September 22, 2015 through GA Okumu & Company Advocates. The claimant prayed for judgment against the respondent for:
 - a) Outstanding emoluments Kshs 297,162
 - b) Costs of the suit
 - c) Interest on (a) and (b) above until payment in full
 - d) Any other relief or further relief as this honourable may consider just fit.
2. The respondent filed on November 9, 2015 the response to the claim through Oduor Siminyu & Company Advocates. The respondent prayed that the claimant's suit be dismissed with costs.
3. The claimant's advocate stated that the claimant is in Saudi Arabia and thus the claimant will not be able to testify to his case. The respondent's advocate did not object to the same and he further stated that he will not also be calling any witness to testify in the matter. The case is being determined on pleadings, documents and the parties' final submissions.
4. The court has considered the pleadings, documents, and the final submissions. The court makes the following pertinent findings.



5. To answer the 1st issue for determination the court returns that the evidence is that the respondent employed the claimant as a customer attendant and later as a forecourt supervisor. He worked from July 2012 to March 2015 per the letter of recommendation dated 22.14.2015 as issued by the respondent.
6. The 2nd issue is whether the claimant is entitled to overtime and public holiday payment as prayed for. The claims are for special damages requiring particular pleading and strict establishment. The claimant provided no evidence that he worked for the 18 public holidays and 1032 hours of overtime. The basis of calculating the amounts claimed was not pleaded or provided at all. The claims will fail as not justified at all.
7. Similarly, the claimant provided no contractual basis for the terminal benefits of ½ salary for 3 years and the formula invoked in calculating the amount as claimed was not provided.
8. The court has considered all circumstances of the suit and there will be no orders on costs.

In conclusion the suit is hereby dismissed with no orders on costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT MOMBASA THIS FRIDAY 22ND JULY, 2022.

BYRAM ONGAYA

JUDGE

