



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO 134 OF 2018

GEORGE OGONDA OPIYO.....CLAIMANT

VS

CHINA DALIAN INTERNATIONAL ECONOMIC & TECHNICAL GROUP LTD

BACHUMA GATE PROJECT.....RESPONDENT

AND

CAS CONSULTANT ENGINEERING LTD.....INTERESTED PARTY

JUDGMENT

Introduction

1. By a Statement of Claim dated 9th March 2018 and filed in court on 14th March 2018, the Claimant seeks payment of overtime compensation in the sum of Kshs. 67,932.
2. Neither the Respondent nor the Interested Party filed a response. The matter therefore proceeded by way of formal proof.

The Claimant's Case

3. The Claimant states that he was employed by the Interested Party as a Road Inspector on 2nd March 2015. The Claimant further states that the Interested Party was a consultant in the Maji ya Chumvi-Bachuma Gate Road Project, where the Respondent was a contractor.
4. The Claimant adds that there was an arrangement between the Respondent and Interested Party that the Interested Party would pay the Claimant's salary component for normal working hours from 8.00 am to 5.00 pm. Under this arrangement, the Respondent was to pay the Claimant for any overtime worked.
5. The Claimant states that the Respondent had paid his overtime save for the period between November and December 2017.
6. The Claimant therefore claims the sum of Kshs. 67,932 in overtime compensation for the stated period.
7. The Claimant also asks for costs and interest.

Findings and Determination

8. The Claimant's claim in this case is for overtime compensation which falls within the category of special damages.
9. In *Richard Okuku Oloo v South Nyanza Sugar Co. Ltd [2013] eKLR*, the Court of Appeal restated the well-grounded principle that special damages must be specifically pleaded and proved with a degree of certainty and particularity.
10. In this case all the Claimant did was to file a copy of overtime form bearing his name. He however did not demonstrate any nexus between the contents of the form and the amount he now claims from the Respondent.

11. Overall, I find and hold that the Claimant has not proved his claim to the required standard. The claim therefore fails and is dismissed.

12. I make no order for costs.

13. Orders accordingly.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 27TH DAY FEBRUARY 2020

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JUDGE

Appearance:

Mr. Muchiri for the Claimant

No appearance for the Respondent