



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

CAUSE NO 133 OF 2018

ROSEJEDDY ACHIENG ODEDE.....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. 48,859.
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 she was employed by the Interested Party in February 2015 in the position of Laboratory Attendant. The Claimant adds 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 avers 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 responsible for paying the Claimant for any overtime worked.
5. The Claimant states that the Respondent had paid her overtime save for the months of April/May 2017 and September/October 2017. The Claimant therefore lays a claim for overtime dues as follows:

- a) April-May 2017: 241 hours @ Kshs. 139.....Kshs. 29,746
- b) September-October 2017: 137.5 hours @ Kshs. 13919,113

Total.....48,859

6. The Claimant further asks for costs plus interest.

Findings and Determination

7. The Claimant's claim in this case is for overtime compensation which falls within the category of special damages.

8. In *John 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.

9. In this case all the Claimant did was to file a copy of overtime form bearing her name. She however made no attempt to link the contents of the form with the figures stated in her claim.

10. Overall, the Claimant did not prove her claim to the required standard. The claim therefore fails and is dismissed.

11. I make no order for costs.

12. 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