



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 134 OF 2014

RAPHAEL MURITU KUNGU.....CLAIMANT

VERSUS

MANAGEMENT BOARD OF PCEA

KARIOBANGI t/a DAYSPRING JUNIOR SCHOOL.....RESPONDENT

JUDGMENT

1. Raphael Muritu Kungu (Claimant) was offered employment through a letter dated 28 April 2011 by Dayspring Junior School (managed by PCEA Kariobangi South Church), (Respondent) as a Cleaner.
2. On 24 June 2013, the Claimant gave notice of retirement on medical grounds to the Respondent. The retirement was to take effect on 1 August 2013. The Respondent accepted the retirement through a letter dated 9 July 2013.
3. The acceptance letter indicated that the Claimant would be paid salary up to July 2013, leave allowance for 2013 and accrued leave up to 2013.
4. On 3 July 2013, the Claimant wrote to the Respondent seeking payment of *overtime pay* in respect of guarding duties over and above the payments indicated in the Respondent's acceptance letter.
5. There was no response and the Claimant sought legal advice as a result of which his advocate wrote a demand letter on 7 October 2013.
6. On 6 February 2014, the Claimant instituted the instant proceedings alleging breach of contract/statute (overtime pay, accrued leave and leave allowance) all totaling to Kshs 225,560/-.
7. In a Memorandum of Response filed in Court on 13 March 2014, the Respondent contended that all overtime was compensated with off days during school holidays; that the Claimant had only 19 leave days and leave allowance of Kshs 500/-.
8. The Cause was heard on 12 November 2018 when the Claimant and Respondent's Caretaker testified.
9. The Claimant filed his submissions on 4 December 2018 while the Respondent filed its submissions on 11 December 2018.
10. The Court has considered the pleadings, evidence and submissions and will examine each head of claim as advanced by the Claimant.

Leave allowance

11. The Respondent contended that the Claimant was owed Kshs 500/- on account of leave allowance. The Claimant however asserted that it was Kshs 520/-.
12. The Court has looked at the Respondent's Personnel Manual. It does not provide for payment of leave allowance. But on account of the Respondent's admission, the Court will allow this head of claim in the sum of Kshs 500/-.

Accrued leave

13. The Claimant asserted that he had a balance of 28 leave days which if commuted would amount to Kshs 5,040/-.

14. The Respondent on the other hand contended that the Claimant had a balance of 19 leave days, equivalent to Kshs 6,588/-.

15. Considering that the amount offered by the Respondent was more generous money wise, the Court will find for the Claimant in the sum of Kshs 6,588/-.

Overtime pay

16. It was not disputed that the Claimant performed duties beyond those of cleaning as stipulated in the contract letter. Most of these duties related to guarding responsibilities.

17. The Claimant filed in Court extracts of relevant Occurrence Books (OB) which leave no doubt that at times he would report to work by 6.00am and leave around 6.00pm.

18. The Claimant also produced *Claim for Overtime Hours* sheets. The Sheets were authorised by the Head teacher though he did not approve the same after the overtime.

19. In the submissions, the Claimant set out in great detail the alleged overtime worked.

20. There were some inconsistencies between the OB and the Sheets but in the view of the Court, the inconsistencies do not suggest that the Claimant did not perform extra duties/overtime.

21. The point of contention was that the Respondent contended that overtime work was compensated with *off duties* during school holidays and in this respect, the Court's attention was drawn to *duty rota* which were in place, as appropriate.

22. The granting of *off days* in lieu of payment of overtime is an accepted and widespread practice in industry within this country. However, there was no explanation from the Respondent why the Overtime Sheets were authorised but not approved or why there was no written agreement on compensation through *off days*. No schedule of the exact dates the Claimant was granted *off days* were produced.

23. In this case therefore, the Court finds that the Claimant was not compensated with *off days* during school holidays for the overtime work and therefore he would be eligible for the Kshs 218,340/- as claimed.

Conclusion and Orders

24. The Court finds and holds that the Claimant has proved to the required standard an entitlement to and is awarded

(a) Leave	Kshs 6,588/-
(b) Leave allowance	Kshs 500/-
(c) Overtime pay	Kshs 218,340/-
TOTAL	Kshs 255,428/-

25. Each party to bear own costs.

Delivered, dated and signed in Nairobi on this 25th day of January 2019.

Radido Stephen

Judge

Appearances

For Claimant Mr. Musyoki instructed by B.M. Musyoki & Co. Advocates

For Respondent Mrs. Ndirangu instructed by Ndirangu Kamau Advocates

Court Assistant Linsey