

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1305 OF 2017

CHARLES NYARINGO RIANGA.....CLAIMANT

VERSUS

HATARI SECURITY LTD.....RESPONDENT

RULING

1. When this Cause was heard on 2 October 2019, the Respondent opted to close its case without leading any evidence. By failing to lead evidence the Respondent failed to discharge the burden placed on employers by sections 10(3),(7),11,17,20 (on itemised pay statement), 43 and 45 of the Employment Act, 2007.
2. In a judgment delivered on 1 November 2019, the Court found the Respondent in breach of contract/statute in failing to pay the Claimant overtime. In the said judgment, the Court took judicial notice of the notorious fact that security guards/watchmen in this country work in 12 hour shifts including during public holidays.
3. The Respondent has now filed an application seeking stay of execution pending the filing of an Intended Appeal.
4. The Court has given due consideration to the application and finds that apart from lacking merit (if the Respondent had issued itemised pay statements to the Claimant and filed copies in Court, it would have easily discharged the burden of showing payment for the overtime claimed), the Respondent has not demonstrated that it will suffer substantial loss if a stay order is not issued.
5. The application is dismissed with further costs to the Claimant.

Delivered, dated and signed in Nairobi on this 19th day of December 2019.

Radido Stephen

Judge

Appearances

For Claimant Mr. Nyabena instructed by Nyabena Alfred & Co. Advocates

For Respondent Mr. Kahindi instructed by Maura, Muthoni, Mikhala, Faraji & Associates

Court Assistant Muturi