



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NO. 1368 OF 2010

ISAAC MWENEZE OKUOGA.....CLAIMANT

VERSUS

KENCHIC LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. The claimant brought this suit on 3.11.2010 claiming the follow dues accruing from 2004 – 2008:

- (a) 512 off days @ Kshs.960 per day491,520
- (b) Overtime on Saturdays 307 hours
- (c) Kshs.90 per hour27,630
- (d) Overtime week days @ 90 per hour.....390,870
- (e) Overtime on Sundays & holidays 5,381 hours
- (f) Ksh.60860,960

Kshs.1,770,980

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2. The respondent filed her defence on 27.1.2011 denying liability to pay the alleged off days and overtime. She averred that the claimant retired on 31.12.2009 and all his dues were paid to him. She therefore prayed for the suit to be dismissed with costs.

3. The suit was heard on 30.1.2017 and 13.2.2018 when the claimant testified as Cw1 and the respondent called her Employee Relations manager M/s Mercy Njoroge as Rw1 thereafter both parties filed written submissions.

Claimants Case

4. Cw1 testified that he was employed by the respondent in January 1997 as a Security Guard and worked until 24.2.2010 when he was terminated on account of redundancy. He explained how he used to work daily without a break and for long hours. He further explained that he was paid for the overtime worked in 1997 and from 2005 until he ceased working. He was however not paid for the overtime and off days worked from 1998 – 2004 and prayed the Court to award the same.

5. On cross examination Cw1 confirmed that in 2010 he reported a dispute on the overtime pay and a letter was written to the respondent. He further confirmed that in June 2010 he went to the respondents office with his lawyer where he was paid Kshs.51,216. He however did not know why the money was paid to him and he maintained that it did not include overtime pay.

Defence Case

6. Rw1 stated that she was the Assistant HR Manager when the claimant was terminated. She explained that the claimant was retired after attaining 55 years as per the CBA and all his dues under the CBA were paid. Thereafter the claimant lodged a case at the Labour office where the case was heard and dismissed. Thereafter he reported to his union and a meeting was convened between the union and the employer and it was agreed that there was some outstanding pay for overtime and rest days for 2004 -2008 which need to be computed and paid.

7. Rw1 further testified how the respondent computed the said overtime and paid Kshs.51,216 by cheque to the claimant and how the same was accepted as full and final pay without any objection. She therefore contended that the dispute is issue was fully settled.

8. On cross examination, Rw1 admitted that the claimant used to work from 6 a.m. to 6 p.m. and at times upto 9 pm if necessary. She explained that the Kshs.51,216 was the net pay calculated from the computation of the overtime prepared by the claimant in Appendix 8 in the defence. She denied that the claimant worked throughout and contended that he used to have an off day every week. He explained that the overtime pay was base on the rate of 1 ½ and double pay per hour for normal day and Sunday and public holidays respectively.

Analysis and Determination

9. After careful consideration of the pleading, evidence and submissions the issue for determination is whether the reliefs sought should be granted.

Reliefs

10. The claimant pleaded in paragraph 4 of the claim as follows:

“4. The claimant’s claim against the respondent is for unpaid salaries for overtime worked, off days untaken and holidays worked from the period 2004 to 2008.”

11. In his evidence in Chief, he contradicted the aforesaid pleading by stating thus:

“I am claiming overtime and off days. I am claiming overtime for 1998 – 2004..... I was paid overtime in 1997 but from 1998 I was not paid overtime. From 1998- 2004. From 2005 I was paid overtime and off duty. I have no claim from 2005.”

12. The claimants demand letter dated 25.8.2010 corroborates the foregoing testimony that the claim is for the accruals for the period 1998–2004. The letter stated as follows:

“our client’s claim is for unpaid overtime, off days and holidays worked from the period 1998 – 2004. The said computation is as follows:-

- (a) off days - 512 days @ Kshs.960 per day491,520***
 - (b) Saturdays worked - 307 hours***
 - (c) Kshs.90 per hour27,630***
 - (d) Overtime week days – 4343 hours***
 - (e) 90 per hour.....390,870***
 - (f) Sundays & holidays - 5,381 hours***
 - (g) Ksh.160 per hour.....860,960***
- Kshs.1,770,980”***

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13. The foregoing sums demanded are the same ones pleaded in paragraph 5 of the claim now before the Court. Whichever one looks at the claim, it is my opinion that it is not supported by evidence. Whereas the pleadings talk of benefits accruing in the period between 2004 and 2008, the claimants evidence refer to benefits accruing from 1998 to 2014.

14. Rw1 testified that after the claimant brought this suit claiming the said overtime and off days for 2004 to 2008, the dispute was resolved and payment of Kshs.51,216 paid to the claimant as full and final settlement. The foregoing contention was confirmed by the claimant in his testimony when he admitted that all his overtime and off days worked for the period 2005 onward were paid for and he had not claim in respect of that period.

15. It is trite law that parties are bound by their own pleadings. Having found that the claim before the Court is for a period that the claimant admits under oath that he was fully paid and that he has no further claim for that period, I proceed to hold that the claimant has failed to

discharge his burden of proving his claim on a balance of probability.

Deposition

16. The suit is dismissed with no orders as to costs.

Dated, Signed and Delivered in Open Court at Nairobi this 10th day of May, 2018

ONESMUS N. MAKAU

JUDGE