



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 1542 OF 2015

JAMES OMBOGO MOOGI.....CLAIMANT

VERSUS

THE BOARD OF TRUSTEES

MARIST INTERNATIONAL UNIVERSITY COLLEGE.....RESPONDENT

JUDGMENT

Introduction

1. In this claim the Claimant seeks payment of overtime dues. The claim is contained in a Memorandum of Claim dated 24th August 2015 and filed in Court on 2nd September 2015.
2. The Respondent filed a Memorandum of Defence on 25th November 2015 and the matter proceeded to hearing with the Claimant testifying on his own behalf and Fredrick Ukongo Mutuku for the Respondent.

The Claimant's Case

3. The Claimant was employed by the Respondent as a security guard on an annual renewable contract effective 1st April 2012. The contract was renewed three (3) times until 31st March 2015 when the Respondent notified the Claimant that his employment had come to an end.
4. The Claimant states that from the time of his employment up to the time of termination, he worked for 12 hours per day (from 6.00 am to 6.00 pm). He therefore claims the sum of Kshs. 462,369.60 being overtime compensation for 88 hours per month calculated at one and half times of the normal hourly rate.

The Respondent's Case

5. In its Memorandum of Defence dated 24th November 2015 and filed in Court on 25th November 2015 the Respondent admits having employed the Claimant as a security guard on annual renewable contracts with the last contract ending on 31st March 2015.
6. The Respondent states that by the terms of the first contract dated 1st April 2013, the Claimant was required to work for 60 hours per week with a provision that any period above 45 hours would be considered as overtime payable at one and half times of the normal hourly rate.
7. The Respondent further states that its procedures required that for any overtime worked, an employee would make a formal claim whereupon a requisition for the applicable compensation would be prepared

and the amount duly paid. The Claimant never made any formal claim for any overtime worked.

8. The Respondent adds that after the Claimant's first contract it cut down on the working hours for guards including the Claimant as detailed in the two subsequent contracts. Specifically, by the second contract running from 1st April 2013 to 31st March 2014 the Claimant was required to work for only nine (9) hours per day consequently dispensing with overtime. For the last contract for period between 1st April 2014 and 31st March 2015, the Claimant was required to work for 45 hours per week.

9. The Respondent therefore refutes the Claimant's claim that he worked for more than 45 hours per week over his last two contracts.

10. The Respondent however admitted owing the Claimant the sum of Kshs. 153,220.32 in overtime compensation on account of the first contract.

Findings and Determination

11. The single issue for determination in this case is whether the Claimant is entitled to overtime compensation as claimed. The Claimant's employment was documented in three (3) contracts running from 1st April 2012 to 31st March 2013; 1st April 2013 to 31st March 2014 and 1st April 2014 to 31st March 2015. At the time of writing this judgment, the Respondent had paid to the Claimant the sum of Kshs. 153,220.32, being overtime compensation on account of the first contract, which provided for 60 working hours per week, with the condition that any hours in excess of 45 hours would be paid as overtime.

12. The Respondent states that after the first contract, the working hours for security guards were adjusted to 45 hours per week, with the subsequent contracts being adjusted accordingly. The Claimant however maintains that despite the written adjustment on the hours of work, he continued working overtime. In support of his case, he produced a security shift/attendance, register ostensibly belonging to the Respondent.

13. The Respondent's witness, Fredrick Ukongo Mutuku who at the material time worked for the Respondent in the position of Accountant, told the Court that he had never seen the register produced by the Claimant. If the Claimant's testimony is to be believed, he was in possession of an official document belonging to the Respondent. He did not explain to the Court how the document had come into his possession and the Court was unable to verify its authenticity. That being the case, the Court finds that the claim for overtime compensation on account of the Claimant's contracts running from 1st April 2013 to 31st March 2014 and 1st April 2014 to 31st March 2015 was not proved and is dismissed.

14. Each party will bear their own costs.

15. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 28TH DAY OF JULY 2017

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JUDGE

Appearance:

Mr. Nyanyuki for the Claimant

Miss Kamau for the Respondent