



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT KISUMU**

**INDUSTRIAL CAUSE NO. 167 OF 2013**

*(Formerly Nairobi Cause No. 1369 of 2012)*

***(Before Hon. Lady Justice Maureen Onyango)***

**ALFRED KOGO ..... 1ST CLAIMANT**

**BENARD OKARI ..... 2ND CLAIMANT**

**-Versus -**

**ELDOMATT SUPERMARKET LIMITED ..... RESPONDENT**

**JUDGEMENT**

The Claimants herein Benard Okari and Alfred Kogo filed suit against the Respondent|Eldomatt Wholesale seeking the following reliefs:

**Benard Okari**

Leave due

1. 21 days x 11 years x 10,559/26 Kshs. 93, 812

2. Overtime

10 hours x 6 = 60 hours - 45 = 15 hours OT per

week for 572 weeks - 8580 hours x 945/195 = Kshs.415,800

Total Claims Kshs.509,612

**Alfred Kogo**

1) Pay in lieu of notice Kshs.13,610

2) Leave due 21 days x 7 years = Kshs. 7,689

3) Service Benefits 15 days x 7 years x 11835.3	Kshs.14,422
4) Overtime	
45 hours per week	
10 hours x 6 - 60 hours - 45 = 15 hours	
15 hours per week x 4 weeks = 60 hours per month	
60 hours x 1.5 x 11835/195	Kshs.458,808
Total	Kshs.521,529

The Respondent is a supermarket trading in both retail and wholesale trade in Eldoret, Uasin Gishu County. The Claimants allege that they were employees of the Respondent.

Benard Okari Alleges he was employed by the Respondent on 20th October, 2000 as a shop assistant at a monthly Salary of Shs.4,000. His employment was terminated on 11th April, 2012. At the time of termination his Salary was Shs,8,500 per month. He alleges the termination was unfair because he was not given an opportunity to defend himself against any wrongdoing tricking him to resign.

Alfred Kogo alleges that he was employed by the Respondent in April, 2005 as a turnboy at a salary of Shs.6,500 per month. He was later given the position of driver. He held that position until 25th May, 2012 when his employment was terminated. His last Salary was Shs.11,000 per month.

He alleges the termination of his employment was unfair because he was not given an opportunity to defend himself against the charges levelled against him.

Both Claimants reported their termination to the union who on 14th June wrote to the Respondent demanding terminal dues for the Claimants as tabulated in their respective demand letters. When the Respondent did not respond, they filed this claim.

The Respondent filed a statement of Defence on 26th March 2014 denying the particulars of the Claims by the Claimants and averred that the Claimants were paid all their terminal dues. The Respondent averred that the Claims not sufficiently verified, were incompetent, misconceived and incurably defective. The Respondent prayed that the Claims be dismissed with costs.

The Respondent also filed a witness statement of J. S. Shah, the director of the Respondent. Mr. Shah stated that Benard Okari worked with the Respondent from 2008 to April 2012. Mr. Shah states that Benard Okari took annual leave of 21 days and when he reported back he informed the Respondent that he was no longer interested in working for the Respondent and wanted to be paid his terminal dues. The Respondent paid his terminal dues made up as follows:-

1. 1 months pay in lieu of Notice	Kshs. 9,000
2. Overtime from 2008 to 2012	Kshs. <u>188,304</u>
Total	Kshs.197,304

Mr. Shah further stated that Alfred Kogo was voluntarily resigned from duty as a turn boy and was paid his full terminal dues as follows:-

1. 1 month Salary in lieu of notice	Kshs. 12,500
2. Leave days for 2 years	Kshs. 25,000



testimony and his pleadings tell different stories. The upshot is that his Claim has not been proved and is dismissed.

There will be no orders for costs.

**Dated, signed and delivered in open court this 17th day of the December, 2015**

**MAUREEN ONYANGO**

**JUDGE.**

**Representation**

Court Assistant - Hassan Hamisi

Claimant: Obura - Obwatinya & Company Advocates

Respondent: Kitiwa & Company Advocates