

2026 April | Employment

OVERTIME PAY CAN BE ESTABLISHED THROUGH BIOMETRIC RECORDS

H. Young & Company (E.A) Limited v Okoth & another [2025] KECA 466 (KLR)

Background

- 1.1 The Respondents were employed by the Appellant in various capacities at its Olkaria IV Site. Their employment was governed by a Collective Bargaining Agreement ("CBA") signed by the parties on 10th September 2013.
- 1.2 The Respondents filed a claim before the Employment and Labour Relations Court at Kisumu alleging that the Appellant had failed to pay them overtime allowances amounting to Kshs. 942,000.00, covering the period from May 2013 to July 2014.
- 1.3 Under the CBA, normal working hours were eight (8) hours per day on weekdays and five (5) hours on Saturdays. Overtime was payable at 1.5 times the normal rate per hour, and at double the normal rate for hours worked on Sundays.
- 1.4 In support of their claim, the Respondents produced a staff movement and hours summary report generated by the Appellant's biometric clocking system, showing that they regularly clocked in before 8.00 a.m. and clocked out after 5.00 p.m.
- 1.5 The Appellant argued that the early clock-ins and late clock-outs were attributable to the time when each employee was picked up in the morning and evening by the "pooled transportation" not necessarily to the hours worked.
- 1.6 The trial court found in favour of the Respondents and awarded the full amount of Kshs. 942,000.00 as unpaid overtime.
- 1.7 Aggrieved by the decision, the Appellant filed an appeal before the Court of Appeal challenging both the entitlement to overtime and the quantum awarded.

2. Court of Appeal's Determination

The Court of Appeal held as follows:

- 2.1 The Staff movement and hours summary report availed by the Respondents showed that the Respondents reported earlier than 8:00am and clocked out after 5:00pm,

meaning they were at work for more than the required eight hours

- 2.2 The Appellant's assertion that the Respondents reported early but did not start work until 8:00am, and that they stopped working immediately after 5:00pm as they waited for transport outside the work site, was not supported by any evidence.
- 2.3 The Respondents' claim was supported by documentary evidence which showing they were at their place of work for more than the normal eight working hours per day. Therefore, they sufficiently established their claim on a balance of probabilities. It was incumbent upon the Appellant to rebut the evidence, which it failed to do.
- 2.4 The Appellant had put in place the clocking in and clocking out system at the work site and it was therefore disingenuous on their part to disown the same system and the import of the information contained in the reports

generated by the system which was produced in evidence by the Respondents.

- 2.5 The Appellant did not produce any evidence to disprove the Respondent's claim for overtime. Information on the payment of overtime allowances is ordinarily expected to be in the custody of the employer, who maintains employment records. By virtue of Section 112 of the Evidence Act, where any fact is especially within the knowledge of a party to civil proceedings, the burden of proving or disproving that fact lies upon that party.

The Respondents sufficiently proved the quantum of overtime payable. Since the Appellant did not to produce evidence to controvert the amounts claimed, the appeal was dismissed with costs to the Respondents.

Key Contacts



Anne Muema
Advocate / Managing Partner

Email: amutheu@mutieadvocates.com



Maureen Kubai
Associate

Email: mkubai@mutieadvocates.com

About Mutie Advocates

Mutie Advocates is a Nairobi-based law firm with a strong focus on legal compliance, data protection and privacy law, complemented by a broad range of legal services. Built on a foundation of legal excellence, the firm provides expert support in corporate and commercial law, employment and labour relations, intellectual property, litigation, dispute resolution and regulatory compliance. Known for its practical and client-centered approach, Mutie Advocates helps organizations navigate complex legal and regulatory landscapes through data audits, policy development and strategic legal advisory. The firm serves a diverse clientele, including individuals, corporates, non-governmental organizations and public institutions, delivering timely, effective and solution-oriented legal services.

Website: www.mutie-advocate.com

Phone: +254 768 042 180

E-mail: info@mutieadvocates.com

Address: Assi Centre, School Lane, Westlands

P O Box 211-00621, Nairobi

Disclaimer:

The views expressed in this article are for general guidance and should not be interpreted as legal advice. Mutie Advocates shall not be held liable for any reliance placed on this information without formal legal consultation. Always seek professional advice tailored to your situation.