

**IN THE SUPREME COURT OF BELIZE, A.D. 2009**

**ACTION NO. 669/2004**

**LUIS ANGEL GUEVARA**

**PLAINTIFF**

**BETWEEN AND**

**SOUTHERN CHOICE BUTANE  
ENRIQUE ORTEGA TORRES**

**DEFENDANTS**

**ACTION NO. 673/2004**

**JOSE LUIZ CRUZ**

**PLAINTIFF**

**BETWEEN AND**

**SOUTHERN CHOICE BUTANE  
ENTRIQUE ORTEGA TORRES**

**DEFENDANTS**

Hearings

2009

16<sup>th</sup> June

17<sup>th</sup> June

18<sup>th</sup> June

8<sup>th</sup> July

Mr. Oscar Sabido SC for the Plaintiffs

Mrs. Robertha Magnus-Usher for the Defendants

## JUDGMENT

### 1. Facts

The first defendant is a company incorporated under the Companies Act Chapter 250 with registered office situate at 13 Miles, Northern Highway, Belize. The company is a subsidiary of Zeta Gas Corporation, with headquarters in Guatemala and Ciudad, Juarez, Mexico. The business of the company is the supply and sale of butane gas throughout Belize, and it has several outlets or branches for this purpose. The company also has a fleet of motor vehicles, about thirty-five in number, for the purpose of supplying gas throughout Belize.

The second defendant was the General Manager of the company until July 2005, when he abandoned his job and was never seen again by the plaintiffs. Learned senior counsel for the plaintiffs, therefore, informed the court at the beginning of the trial that he was not asking for any orders against the second defendant.

The plaintiffs, Jose Luis Cruz (first plaintiff) and Luis Angel Guevara (second plaintiff) were employed by the defendant company. The first plaintiff was employed with effect from 12th November, 2003 to provide mechanical services in relation to the company's vehicles, and the second plaintiff was employed with effect from 24<sup>th</sup> November, 2003 to provide accounting services. Both plaintiffs worked for the company for about one year, after which both of them claimed that they were dismissed by the

defendants in November 2004, before the second defendant abandoned his post. Both plaintiffs in December 2004 brought a writ – the predecessor of the modern claim – against the defendants, not for wrongful dismissal, but for moneys allegedly due to them. It is important to quote the material parts of the statements of claim filed by both plaintiffs, starting with the first plaintiff.

### **PARTICULARS OF CLAIM**

1. ....
2. ....
3. **The defendants hired the plaintiff to work for the period 12<sup>th</sup> November, 2004 until the 23<sup>rd</sup> November, 2004, for the services of mechanical, welding and automotive electrical services at the rate of \$17.75 per hour for the period 12<sup>th</sup> November, 2003 to 15<sup>th</sup> September, 2004 and the rate of \$25.00 per hour for the period 16<sup>th</sup> September, 2004 to 23<sup>rd</sup> November, 2004.**
4. **That the period 12<sup>th</sup> November, 2003 to 23<sup>rd</sup> November, 2004, equals a total of 2,793 hours, amounting to a total of \$62,999.00.**
5. **That the defendants paid for \$2,217 hours amounting to a total of \$48,585.00, leaving an outstanding balance of 576 hours.**

**The Plaintiff therefore claims:**

1. The sum of \$14,414.00 being 576 hours at \$25.00 per hour.
2. Interest
3. Costs.”

The second plaintiff’s claim is as follows:-

**PARTICULARS OF CLAIM**

1. ....
2. ....
3. The defendants hired the plaintiff to work for the period 24<sup>th</sup> November, 2003 until the 12<sup>th</sup> November, 2004 for the services of Accountant at the rate of \$17.77 per hour for the period 1<sup>st</sup> February to 30<sup>th</sup> September, 2004 and thereafter at the rates of \$22.22 per hour from 1<sup>st</sup> October, 2004 to 12<sup>th</sup> November, 2004.
4. That the period 24<sup>th</sup> November, 2003 to 12<sup>th</sup> November, 2004, equals a total of 3,203 hours, amounting to a total of \$55,646.85.
5. That the defendants paid the sum of \$37,306.70, leaving an outstanding balance of \$18,340.15

**The Plaintiff therefore claims:**

1. **The sum of \$18,340.15**
2. **Interest**
3. **Costs.”**

The plaintiffs, in each action, obtained a default judgment against the defendants on 6<sup>th</sup> May, 2005 for the respective sums claimed. The defendants after several applications before the court, eventually succeeded on 22<sup>nd</sup> December, 2005, in setting aside the said default judgments obtained on 6<sup>th</sup> May, 2005, and the matters were set down for case management and subsequent trial. The matters came up before me for trial in June 2009. At the commencement of the trial, both counsel for the parties made applications for both matters to be consolidated, and tried together on the ground that both matters involved the same defendants and the same issues. The court made the order for both matters to be tried together.

The plaintiffs in support of their claims tendered in evidence witness statements; and a perusal of these statements would reveal that the plaintiffs claims are for overtime work, even though the statements of claim do not mention that the moneys claimed are for overtime work. But before examining the evidence in relation to these claims for overtime work, some discrepancies in the statements of claim must be mentioned.

There are some discrepancies between the rates of pay claimed in the statements of claim, and the overtime records tendered in evidence, prepared by the plaintiffs. The plaintiff Cruz in paragraph 4 of his statement of claim is claiming an hourly rate of pay of \$22.56 per hour, according to the arithmetical calculations using the total hours and amount of money claimed

in that paragraph. But when similar calculations are made with the figures in paragraph 5 of the said claim, the hourly rate of pay claimed is reduced to \$21.92 per hour. Further down the claim at paragraph 1, when the calculations are made the hourly rate increases to \$25.03 per hour.

More confusion arises when consideration is given to the hourly rate requested by Cruz in his exhibit tendered as J.C.3 which is a record prepared by him of the hours worked overtime and the rate of pay per hour he is claiming. In this record, he is claiming between the period 12<sup>th</sup> November, 2003 to 31<sup>st</sup> December, 2003, a rate of \$17.75 per hour. But according to his weekly salary stated by him for the said period of \$800.00 for every 45 hours the rate should be \$17.78 per hour. Similarly, for the period February 2004 to September 2004 at a weekly salary of \$950 for every 45 hours, the rate should be \$21.12 per hour. For the period from September, 2004 to November, 2004 at a weekly salary of \$12.50 for every 45 hours, the rate per hour should be \$27.78, but he has claimed \$25.00 per hour.

Similar discrepancies arise with respect to the second plaintiff. In his paragraph 4 of his statement of claim, after making the calculations, the rate claimed amounts to \$17.38 per hour. But in his exhibit L.G.2, a record prepared by him claiming overtime hours worked and rates of pay per hour, the rates vary, based on his salary, to \$13.34 per hour, to \$17.78 per hour and to \$22.23 per hour, but never \$17.38 per hour, as claimed in paragraph 4 of statement of claim.

I mention these discrepancies in the statements of claim, and the overtime records prepared by the plaintiffs, because they may indicate some

inconsistencies on the part of the plaintiffs as to the hourly rates of pay they are claiming.

## **2. The Labour Act**

It must not be forgotten though that the Labour Act Chapter 297 makes provisions with respect to the working hours for workers and their rates of pay for overtime work. Sections 116 and 118 of the Act states:-

**116-(1) “No worker shall be obliged to work on more than six days in any week or for more than nine hours of actual work in any day or forty-five hours of actual work in any week.**

**(2) “The gross weekly wages of workers shall not be reduced as a result of the reduction of the maximum weekly working hours and any overtime hours shall be calculated by using the gross weekly wages for a forty-five hour week as the ordinary rate of pay.”**

**118-(1) “If any worker works for and at the request of his employer on a public holiday or a Sunday or other agreed rest day or for more than nine hours in any day or forty-five hours in any week, he shall be paid wages for such extra work at the following rates –**

**(a) .....**

**(b) .....**

**(c) On Sundays or other agreed rest days –  
at a rate of not less than one and one-half  
times his ordinary rate of pay; and**

**(d) For hours worked in excess of nine hours  
in any day or forty-five hours in any week  
– at a rate of not less than one and one-  
half times his ordinary rate of pay.”**

There are certain categories of persons who are excluded from the provisions of section 116 and 118 of the Act. Section 119 of the Act, states:

**119-(1) Section 115 to 118 shall not apply to –**

**(a) “Persons holding positions of  
supervision or management or  
employed in a confidential capacity.”**

The question that arises now is this: Did the plaintiffs hold positions of supervision or management in the defendant company? If they did, they would not be entitled under the provisions of section 116 and 118 of the Act to claim the overtime hourly rates of pay mentioned therein

### **3. Positions of Supervision**

Section 119(1) (a) does not use the words, supervisor or manager. The subsection uses the clause “persons holding positions of supervision or

management.” If parliament wanted, it could have easily said persons holding the positions of supervisor or manager. But parliament used the clause “persons holding positions of supervision or management;” and I believe by using this clause, parliament intended to include, not only persons designated as supervisors or managers, but persons whose duties included supervision or management of other workers; but who may not have been designated supervisor or manager. Therefore, in order to determine whether the plaintiffs were persons holding positions of supervision or management in the defendant company, the court will have to examine the evidence in relation to the plaintiffs positions in the company and their duties and responsibilities.

The plaintiff Cruz testified that he was a mechanic, welder and electrician, and his duties were to repair the company’s vehicles as a mechanic. He said that about four people worked on the vehicles of the company. He said he was never described as a supervisor in the mechanic department. He admitted that he wrote a letter to another employee of the company in which he described himself as chief mechanic. In the mechanic department, there were other workers whose duties were to assist the plaintiff Cruz. One of the assistants was Gregorio Gutierrez who was an assistant mechanic who would follow the plaintiff Cruz to several branches of the company nationwide to repair vehicles. He said his duties were to assist the plaintiff Cruz and that Cruz was the mechanic of the company.

The other person who assisted plaintiff Cruz in the mechanic department was William Estrada. He said he worked with the company in 2003 and 2004, and that he worked with the plaintiff Cruz. He said Cruz

was his boss, and chief mechanic of the company. He said he took orders from Cruz regarding his work, and that he was paid a salary of \$500.00 a week. His salary was much less than that paid to Cruz. There is evidence that Cruz began at a gross salary in November 2003 of \$1,600 every two weeks. This amount increased to \$1,900 in May 2004, then to \$2,500; and finally to \$3,800, fort-nightly at the time when his employment came to an end in November 2004.

The plaintiff Cruz testified that he was the one doing all the work around the country; but as shown above, the witness Gutierrez said that he would follow the plaintiff nationwide to do repairs and maintenance of vehicles and Estrada testified that he took orders from Cruz concerning his work.

Was Cruz holding the position of supervision bearing in mind the above evidence? It does not seem to me that the actual doing of the required work would be inconsistent with holding a position of supervision. It is conceivable to me that a person holding a position of supervision would also be required to do some of the actual work. I think the test to determine whether a person is holding the position of supervision, as that clause is used under section 119 (1) (a) of the Act, is whether that person has the authority of the employer to issue instructions to other persons employed in his department, as to the carrying out of the duties of that department. The fact that the person does some work of the same nature himself, does not mean he is not a person holding a position of supervision. I am of the view that the intention of section 119 (1) (a) is to include a person who has the

authority to supervise other workers, even though he may not be designated a supervisor by his employer.

The plaintiff Cruz admitted that he was chief mechanic. There is evidence that other persons worked in the mechanical department who assisted him in the duties of that department and that these persons considered him the boss and assisted him in the work and took orders from him. His salary was over and above his assistants, and according to the evidence was, at one point, twice as much as the assistant Estrada. Based on the above evidence, I hold that the plaintiff Cruz held the position of supervision in the mechanical department of the company.

The plaintiff Guevara said he was employed as an accountant with the company. He admitted in cross-examination that he sent a letter on behalf of the company in which he signed as general accountant. He said his responsibilities or duties included the preparation of inventory of gas and cylinders and he processed sales reports. He said he had control over an inventory of sales parts and at the end of each month, he would prepare a balance sheet and report the results. He said the accounting books from the other branches of the company would be faxed to him; and he would prepare reports from them and report to the General Manager Mr. Ortega. He said he had no employees who assisted him in payroll nor was he responsible for workers.

Lillian Vanegas gave evidence and her witness statement was tendered in evidence. She said that she worked with the defendant company from around November, 2003 to May, 2005. She said she was the assistant

to the accountant who was the plaintiff Guevara. This is what she said in her witness statement:

**“Whenever I worked overtime, I would receive payment for the hours worked. Luis Guevara was my boss and was the head of the Accounting Department. My salary was \$600.00 paid every 15<sup>th</sup> and ending of the month and with overtime I would earn more. My total basic salary was therefore \$1,200.00 monthly. Luis Guevara would prepare the overtime sheet which was included in the payroll sheet and Luis Guevara was the one who gave me my pay. The only time Luis Guevara didn’t hand pay out to the workers is when he wasn’t at work. I don’t know the salary that Guevara got because he prepared the payroll and he didn’t let the rest of us see it. I knew that Guevara was considered an Assistant Manager of the company and when Enrique Ortega wasn’t at work Guevara acted as the boss and issued orders. There were two of us who worked in the Accounting department under Luis Guevara.”**

In her evidence-in-chief this is what she said: “He (Guevara) was my boss because I was working under his responsibility.” She said her job was

filing all the accounting documentation which included cheques, vouchers and overtime sheets. In her witness statement she said she was no longer working with the company.

It was submitted that the plaintiff Guevara was an accounts employee or keeper of the accounts and that all the managerial and supervisory decisions about the accounts of the company were the responsibility of the then General Manager Ortega, who on the evidence issued cheques without supporting invoices. It was further submitted that the fact that the plaintiff Guevara worked under Ortega who prepared cheques without supporting invoices; and the fact that Ortega was questioned about these matters, and then abandoned his job, show that the plaintiff Guevara just had the label General Accountant assigned to him; but his true functions were that of a bookkeeper and not the management and supervision of the accounts.

The evidence is that Ortega was not an accountant. But I have no doubt that as General Manager he was a person holding a position of management in the company. But as the evidence of Lillian Vanegas shows the plaintiff Guevara was her boss and there were two of them who worked under the plaintiff Guevara. I believe the evidence of Lillian Vanegas quoted above. I hold that the second plaintiff also held the position of supervision in the company. I believe that there were ordinary workers of the company, not holding supervisory positions who were paid for overtime work.

#### **4. Agreement - overtime work**

As we have seen from section 119 (1) (a) of the Labour Act, persons holding positions of supervision, are not entitled under section 116 and 118 of the Act to the overtime pay or the rates specified in those sections. But apart from the Act, was there an agreement between the plaintiffs and the company that the plaintiffs would work overtime, and that they would be paid for the overtime work at the hourly rate claimed by the plaintiffs? If there was such an agreement, the plaintiff would be entitled to claim overtime pay under that agreement, although, as I have held, they are excluded under section 119 (1) (a) of the Act from claiming for overtime work and pay under sections 116 and 118 of the Act. Was there such an agreement for overtime work? This is what the plaintiffs said in their witness statements, starting with the first plaintiff.

4. **It is true that I worked Mondays to Saturdays but I went in at 7:00 a.m. and worked right through and I usually stayed at work past 5:00 p.m. and until late in the evenings when I was not out district.**
5. **I kept a record of all my overtime because Enrique Ortega Torres told me that the overtime was to be paid later because it had to be approved by persons overseas for the following 3 month budget coming up.**
6. **I always asked Enrique Ortega Torres for my overtime pay but he always asked me to**

**wait. At the end of the year he did not pay me the overtime and instead dismissed me.”**

The second plaintiff stated in his witness statement as follows:

- 9. I begun to work overtime but Mr. Ortega told me I was not to be paid immediately as I had to wait for my overtime payments to be approved by the main offices in Guatemala and Ciudad Juarez Mexico as part of a budget prepared every three (3) months.**
- 10. I then began to keep my own records of days worked, total hours worked, total of hours paid and balance of hours of overtime not paid.”**

Both plaintiffs gave evidence, and they swore that there was no written document which stated that the defendants agreed for them to work overtime. Both of them swore, however, that it was a verbal agreement made between them and the then General Manager of the company, the second defendant, to work overtime.

Both plaintiffs also swore that during the period they worked with the company, about one year, they were never paid for overtime work. They swore that since they began their employment with the company in November 2003, they prepared records of overtime hours worked, every two weeks, during the period of employment. These fort-nightly records were

consolidated by each plaintiff, on a date not given in evidence, and were tendered by consent as exhibits as J.C. 3 and L.G. 2.

Both plaintiffs swore in their witness statements, as we saw above, that overtime payments had to be approved overseas, by the main offices in Guatemala and Mexico. Plaintiff Guevara said he did not know whether approval for the overtime was obtained.

The evidence for the plaintiffs is that the regular hours of work were 45 hours per week, at 8 hours a day, Mondays to Fridays, and five hours on Saturdays. The plaintiff Cruz said he worked from 7 a.m. to 6 p.m. almost everyday including some Sundays. He was assisted in his mechanical duties by a fellow employee, who worked with the company from April, 2004 to September, 2004. This employee swore in his evidence and witness statement that both he and the plaintiff Cruz normally worked from 7:00 a.m. to 9:00 p.m. It must be noted that plaintiff Cruz limited his overtime generally to 6:00 p.m. The plaintiff Guevara claimed he worked overtime from 7:00 a.m. to varying times, sometimes to 9:00 p.m. and on occasions to 11:00 p.m.

The plaintiffs' case, in addition to the verbal agreement, could, on the facts, be that an agreement can be implied from their being on the job working over and above the normal working hours. Accordingly they worked for the company over and above the normal working hours, and it ought to be implied from that fact, that there was agreement by the defendants that they work overtime.

The defendant, on the other hand submitted that, the defendant never agreed for the plaintiffs to work overtime. In support of this submission, the defendant submitted that the plaintiffs, though employed for about a year, were never paid overtime, nor were they able to produce any document to show that the defendant agreed for them to work overtime. Moreover, says the defendant, the plaintiffs were told by the second defendant, and this was admitted by the plaintiffs, that overtime had to be approved by the parent company Zeta Gas. Guevara did testify that Zeta Gas and the defendant company were the same company; and that he did not know whether approval was obtained. Assuming that Ortega, the then General Manager, told the plaintiffs to work overtime, this was subject to approval from the Zeta Gas Corporation. And since there is no evidence that approval was obtained, there was no completed agreement or contract to work overtime. *Chitty On Contracts* makes the point.

**“An agreement is also incomplete if it expressly provides that it is “subject to specified points, there is no contract in such a case until either points are resolved or the parties agree that there resolution is no longer necessary for the agreement to enter into contractual force.”** See volume 1 paragraph 2-112.

In *Bols Distilleries v Superior Yacht Services Ltd. 2007 1 W.L.R. 12*, the Privy Council held that there was good evidence that the parties concluded an agreement covering some significant matters relating to the

construction of a yacht; but since many fundamental matters remained to be resolved there cannot be a binding contract between the parties with respect to all matters concerning the construction of the yacht. See paragraph 32 and 35 of the judgment. Support for the same principle comes from the House of Lords decision in *Cobbe v Yeomans Row Management 2008 1 W.L.R. 1752*, where it was held that though there was an oral agreement in principle, but because there remained for negotiation other terms, the ‘agreement contractually’ was an incomplete agreement. I therefore hold that there was no contract between the plaintiffs and the defendants for overtime work.

#### **5. Agreement -Overtime Pay**

But assuming that there was agreement for overtime work, did the defendants agree to pay for the overtime work at the rate of pay per hour claimed by the plaintiffs? The plaintiffs, as we have seen above, tendered in evidence by consent of the defendants J.C. 3 and L.G. 2 which are records of overtime work which were prepared by them, after consolidating fortnightly records, again prepared by them, of overtime work over a period of about one year. There is no evidence as to the date when J.C. 3 and L.G. 2 were prepared by the plaintiffs, but they must have been completed after 12<sup>th</sup> November 2004 in the case of Guevara and 23<sup>rd</sup> November 2004 in the case of Cruz, as these are the dates of the last entries on these exhibits. But Cruz testified that he prepared J.C. 3 when he ‘filed this case.’”

The plaintiff Cruz in the said record prepared by him, claimed overtime payments at following rates per hour: \$17.75 per hour from 16<sup>th</sup> November, 2003 to 31<sup>st</sup> December, 2003; and \$21.11 per hour from 1<sup>st</sup>

January, 2004 to 15<sup>th</sup> September, 2004 and \$25.00 per hour from 16<sup>th</sup> September, 2004 to 23<sup>rd</sup> November, 2004. The plaintiff Guevara, on the other hand, in the record prepared by him, and tendered as exhibit L.G. 2, claimed overtime payments at the following rates per hour - \$13.33 per hour from 24<sup>th</sup> November, 2003 to 14<sup>th</sup> February, 2004; \$17.77 per hour from 2<sup>nd</sup> February, 2004 to 3<sup>rd</sup> September, 2004, and \$22.22 from 1<sup>st</sup> October, 2004 to 12<sup>th</sup> November, 2004. In the case of both plaintiffs, they have calculated the overtime rates per hour, based on the 45 hour week, at the gross salary they received for the week: so that as the gross salary increased, as we have seen, the rates per hour were increased by the plaintiffs. It was these rates and increased rates that they used to calculate moneys owing to them for hours allegedly worked after 4:00 p.m. We have already seen the discrepancies between these records and the statements of claim. Therefore, the plaintiffs case for the rate per hour for overtime that they are claiming is that they were required to work the regular hours of 7:00 a.m. to 4:00 p.m. everyday, Monday to Friday and from 7:00 a.m. to 12:00 noon on Saturdays; that they worked in excess of the regular hours, as shown by the above records they prepared; and therefore they are entitled to be paid the regular rate per hour for the excess overtime hours, according to them, that they worked.

The defendants claimed that there was never an agreement to pay the plaintiffs any hourly rate for overtime work. As I understand the defendants, there was agreement to pay the plaintiffs a gross salary every two weeks; and that the plaintiffs wrongfully broke down the gross salary to an hourly rate, and then claimed that hourly rate for alleged overtime work. The defendants rely on pay slips tendered by the plaintiffs by consent and marked J.L. 4, and L.G. 3 which, according to the defendant, show the gross

salary paid to the plaintiffs, beginning from December, 2004 in the case of Guevara and November, 2003 in the case of Cruz, and the defendant submitted that no hourly rate of pay is mentioned in these pay slips; something which would normally be included in a pay slip if salary was paid at an hourly rate. These exhibits show a fort-nightly rate of pay and not an hourly rate of pay.

The plaintiffs submitted that the reason why an hourly rate for overtime pay is not mentioned in the pay slips and other exhibits is because no overtime pay was paid by the company to the plaintiffs and that is why nothing to this effect is shown on the pay slips and other exhibits.

It was also submitted that the plaintiff Cruz signed a document showing that the company was not indebted to him. The plaintiff Cruz had tendered in evidence a document entitled Final Liquidation. The document states as follows:

**Final Liquidation**

**Working days from 16.11.04 to 23.11.04**

**(8 days) Bz \$1,200.00**

**Vacation period from 22.11.03 to 23.11.04**

**(15 days) Bz \$2,250.00**

**2 weeks Notice payment according to Labour Law**

**Bz \$2,250.00**

**Total Income Bz \$5,700.00**

**(-) Social Security Bz \$ 19.10**

**Bz \$5,600.90**

**I hereby acknowledge receipt of final liquidation from the company Southern Choice Butane Ltd. Given here in Belize this 25<sup>th</sup> day of November 2004.**

**Acknowledge receipt**

**Jose Luis Cruz**

**Head of Mechanic Dept.**

**Acknowledge Delivered**

**Ing. Enrique Ortega T.**

**General Manager**

The plaintiff Cruz said in evidence that the above document, did not say he had no further claim against the company. But the defendants submitted that the above document clearly means that on 25<sup>th</sup> November, 2004, two days after the employment was terminated, the plaintiff received \$5,600.90 in final liquidation from the company, meaning that the plaintiff Cruz acknowledged that the company had no further moneys owing to him. The defence witness Rivera, who is the present general manager of the company, testified that a final liquidation meant a determination of the relationship with the employee, and that nothing was owed to him.

I do not accept the evidence of Rivera because he was not employed by the company during the period the plaintiffs were employed by the company. Moreover, his testimony is based on information gathered from staff members and documents from the company. The defendant Cruz on the evidence clearly believed when he signed the said document on 25<sup>th</sup> November, 2004, after his services were terminated, that the defendant company owed him moneys for overtime pay. Yet he signed the document

acknowledging final liquidation from the company. The Oxford English Dictionary defines the word “liquidate” as “pay off a debt” and the word liquidation is a derivative from that word. It seems to me that the document means that the company made a final pay off of a debt owing to the plaintiff Cruz.

As I have mentioned above, there is no completed contract for overtime work. But even assuming there was such a contract, there is really no evidence that the defendants agreed to the overtime hourly rates of pay claimed by the plaintiffs, who I have held are excluded from the provisions of sections 116 and 118 of the Labour Act dealing with overtime hourly rates of pay.

## **6. CONCLUSIONS**

The plaintiffs were, as I have held, persons holding positions of supervision or management in the company and therefore did not fall under sections 116 and 118 of the Labour Act. Perhaps they did work on some occasions over and above the times the ordinary worker of the company worked. But I do not believe the plaintiffs when they claimed that they worked overtime almost every working day of the year. The only documents to support this feat are documents tendered as exhibits prepared by themselves when this case was filed or after they were dismissed from the job. I have already noted above the inconsistencies with the statements of claim and the said documents prepared by the plaintiffs. In addition the plaintiff failed to prove a completed contract with the company for overtime work and pay.

I therefore make the following orders:

1. Both claims in these matters Nos. 669 of 2003 and No. 673 of 2004 are dismissed.
2. There is no order as to costs.

OSWELL LEGALL  
JUDGE  
8<sup>th</sup> July, 2009

