

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 2023-082893

1. REPORTABLE: NO
2. OF INTEREST TO OTHER JUDGES: NO
3. REVISED: YES

DATE: 23 March 2026

SIGNATURE OF JUDGE:

In the matter between:

SYLVESTER THEMBIKOZI MAQHINA

Applicant

and

THE MINISTER OF DEFENCE AND MILITARY VETERANS

First Respondent

THE SECRETARY OF DEFENCE

Second Respondent

**THE CHIEF OF THE SOUTH AFRICAN
NATIONAL DEFENCE FORCE**

Third Respondent

THE CHIEF OF THE SOUTH AFRICAN NAVY

Fourth Respondent

JUDGEMENT

H F OOSTHUIZEN AJ

1. The applicant, a leading seaman who serves in the South African Navy in Simonstown as a caterer, contends that he has since 20 January 2022 been remunerated incorrectly in relation to overtime duties which he performs in excess of his normal 40 hour working week.
2. The application is based on and calls for an interpretation of the Department of Defence Policy on Working Hours and Working Arrangements for the Department of Defence number 00068/2002 ("the policy"), as amended. All references in this judgement to clauses or to clauses of the policy.
3. The policy distinguishes between "*Regimental Duties*" and "*Overtime and Overtime Duties*", which are remunerated differently.
4. "*Regimental Duties*" is defined in clause 13.s as:

"official duties performed outside the daily hours of work. These duties are designed to ensure continuity of command communication lines, safeguarding of [Department of Defence] assets and the maintenance of essential services."
5. "*Official duty*" is defined in clause 13.d as "*the work a person has to perform or the task(s) to complete, being such duties for which she/he was employed*" and also "*any authorised task the person is required or instructed to perform*".
6. "*Regimental Duties*" can thus only be performed by a person who is employed, required or instructed to perform duties which are designed to ensure continuity of command communication lines, safeguarding of Department of Defence assets and the maintenance of essential services.

7. "Daily hours of work" are defined in clause 13.h, read with clauses 13.i and 13.j, as:

"a period of 8 hours per day during which time official duty must be performed. Daily hours of work are made up of core working hours [between 08:00 and 15:00 during weekdays] and flexible working hours [between 06:30 and 08:00 and between 15:00 and 16:30 during weekdays] and normally occur between 07:45 and 16:15."

8. Clause 31 of the policy deals with the remuneration for "Regimental Duties":

"Regimental duties that must be performed outside the daily hours of work, designed to ensure the continuity of command communication lines, safeguarding of [Department of Defence] assets and the maintenance of designated essential services, shall be remunerated in accordance with the [Department of Defence Instruction] on Overtime and Overtime Duty. The number of staff members required to execute regimental duties is unique to each unit and must be determined by the unit officer commanding..."

9. The remuneration for "Overtime and Overtime Duty" (which are not defined in the policy) is dealt with in clause 41:

"Miscellaneous official duties, not described elsewhere in [the policy], which have prior authorisation and are executed in addition to the daily hours of work, working days [Public Service Act Personnel] or normal week, shall be remunerated in accordance with [Department of Defence Instruction] 00066/2002."

10. Although the Department of Defence Instructions, referred to in clauses 31 and 41, are not included in the court papers, it is common cause that remuneration for "Regimental Duties" is substantially less than for "Overtime and Overtime Duties".

11. In view of the applicant's failure to provide the Court with the Department of Defence Instruction 00066/2002, it is impossible to find whether the payment of remuneration for "*Overtime and Overtime Duties*" accords with section 10(2) of the *Basic Conditions of Employment Act, 1997*¹ in terms of which an employer is obliged to pay an employee at least one and one-half times the employee's wage for overtime worked and whether or not the Department of Defence Instruction 00066/2002 thus accords with this statutory provision. The order which I intend to grant will accordingly not make reference to this statutory obligation.
12. Both "*Regimental Duties*" and "*Overtime and Overtime Duties*" refer to "*official duties*" which are performed outside or in addition to "*the daily hours of work*".
13. An important difference between "*Regimental Duties*" and "*Overtime and Overtime duties*" is that the former is "*designed to ensure the continuity of command communication lines, safeguarding of [Department of Defence] assets and the maintenance of designated essential services*" whilst the latter is "*[m]iscellaneous official duties, not described elsewhere in [the policy]*".
14. The policy also provides for the remuneration of various other duties in clauses 32 to 36, namely "*Watch Keeping Duties*", "*Nursing and Health-related Duties*", "*Guard Duties*", "*Fire, Crash and Rescue Duties*" and "*VIP Protectors and VIP Drivers*".
15. "*Regimental Duties*" are accordingly very specific duties which are designed for very specific purposes whilst "*Overtime and Overtime duties*" are not specifically described or defined.
16. The applicant's unit is responsible for running and managing the Mess at Simonstown. The applicant's "*duties*" after "*daily hours of work*" include tasks such as cleaning the kitchen, washing dishes and supplying serving bowls, plates and cutlery to private social events. These duties are clearly not "*designed to ensure the continuity of command communication lines,*

¹

Act 75 of 1997

safeguarding of [Department of Defence] assets and the maintenance of designated essential services".

17. The applicant does not accordingly perform "*Regimental Duties*".
18. The policy was amended on 20 January 2022, in respect of hospitality services personnel in the South African Navy, which contains the following approved recommendations in respect of working hours and working arrangements for Hospitality Services personnel:
 - "a. *The watch/shift system must be abolished.*
 - b. *Hospitality Services personnel perform a normal 40 hour workweek and execute a duty as per the section duty roaster.*
 - c. *All Hospitality Services personnel in the section must form part of the Hospitality Services duty roaster for that section. Mess Managers to ensure that sufficient personnel are on duty to accommodate the mess strength for feeding as well as any other Hospitality Services related tasks.*
 - d. *Hospitality Services personnel must conduct Regimental Duties associated with Hospitality Services.*
 - e. *Personnel on duty must be published in Part One and Two Orders (according to policy) and remunerated bmo Overtime Duty Allowance."*
19. It is common cause that prior to the amendment, the applicant was remunerated in terms of clause 41 and not in terms of clause 31.
20. The main dispute in this application is whether the amendment has the effect that the applicant is no longer entitled to remuneration in terms of clause 41 but is only entitled to remuneration in terms of clause 31 under circumstances where there was no change in the "*official duties*" which the applicant performs outside or in addition to "*the daily hours of work*".

21. It is unclear what "*Regimental Duties associated with Hospitality Services*" mean and the respondents' answering affidavit contains no explanation what this approved recommendation entail.
22. The fact that "*Hospitality Services personnel must conduct Regimental Duties associated with Hospitality Services*" does not imply that all "*official duties*" performed by Hospitality Services personnel outside the daily hours of work "*automatically become regimental duties*", as contended by the respondents in paragraph 17.2 of the answering affidavit, and does not amend the definition of "*Regimental Duties*" in clause 13.s.
23. The respondents' main contention, as stated in paragraph 16.13 of the answering affidavit, is that "*the difference between "overtime work" and "regimental duties" is to be determined by whether the member is offering his or her services on a shift or normal basis*".
24. There is no merit in this contention. Neither clause 31 nor clause 41 or any of the relevant definitions in the policy contain a link between "*Regimental Duties*" and "*Overtime and Overtime duties*" on the one hand and "*shift work*" on the other hand, which is defined in clause 13.n as:

"specific services delivered by the [Department of Defence] on an interrupted basis, 24 hours a day, seven days a week, all year round. The length of shifts shall be arranged so as to conform to the daily hours of work and the number of hours of work in a work week. In addition the roster for shift work shall be arranged to cater for alternating shifts, meaning that personnel affected shall be able to alternate between shifts".

25. The fact that the "*watch/shift systems*" have been "*abolished*" is in my view irrelevant and makes no difference to the question what "*official duties*" are performed by the applicant outside or in addition to "*the daily hours of work*".

26. It accordingly follows that the applicant remains entitled to be remunerated for all "*official duties executed in addition to the daily hours of work*" in accordance with Department of Defence Instruction 00066/2002, as provided for in clause 41.

ORDER

27. In the premises I grant the following order:

27.1. It is declared that all duties which the applicant performs in addition to his normal working week of 40 hours amounts to "*Overtime and Overtime Duty*", within the meaning of clause 41 of the Department of Defence Policy on Working Hours and Working Arrangements for the Department of Defence number 00068/2002 ("the policy"), and must be remunerated in accordance with the Department of Defence Instruction 00066/2002.

27.2. The respondents are ordered, within 30 days of service of this order on them, to:

27.2.1. calculate the remuneration which the applicant was entitled to from 20 January 2022 to the date of the implementation of this order for "*Overtime and Overtime Duty*" (within the meaning of clause 41 of the policy);

27.2.2. make payment of the difference between the remuneration which the applicant was entitled to for "*Overtime and Overtime Duty*" and the remuneration which was paid to the applicant on the basis of "*regimental duties*" (within the meaning of clause 31 of the policy) from 20 January 2022 to the date of implementation of this order; and

27.2.3. provide the applicant with a written breakdown of the respondents' calculations of the amount due to him.

26.3 The respondents are ordered to pay the costs of this application, including counsel fees on scale B.



HF OOSTHUIZEN AJ

ACTING JUDGE OF THE HIGH COURT

This judgement was handed down electronically by circulation to the parties' and or parties' representatives by email and by being uploaded to CaseLines.

Appearances

Counsel for the Applicant: Adv J P Matthee
instructed by Griesel van Zanten Inc

Counsel for the First to Fourth Respondents: Adv M Kgatla
instructed by State Attorney

Date of Hearing: 29 January 2026

Date of Judgement: 23 March 2026