



**Mathuku v African Mission Health (K); Icon Auctioneers Ltd (Interested Party)
(Cause E859 of 2021) [2025] KEELRC 2707 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2707 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E859 OF 2021
AK NZEI, J
OCTOBER 3, 2025**

BETWEEN

JAMES MATHUKU CLAIMANT

AND

AFRICAN MISSION HEALTH (K) RESPONDENT

AND

ICON AUCTIONEERS LTD INTERESTED PARTY

RULING

1. The application before me for determination is the Respondent’s Notice of Motion dated 10th April, 2025. The following Orders are sought:-
 - a. Spent.
 - b. Spent.
 - c. Spent.
 - d. Spent.
 - e. That warrants of attachment of movable property dated 27th March, 2025 that were issued pursuant to and in execution of the decree issued on 17th March, 2025 and all consequential orders be set aside.
 - f. That the proclamation notice dated 9th April, 2025 that was issued pursuant to and in execution of the decree issued on 17th March, 2025, and all consequential orders thereto, be set aside.



- g. That a declaration be made that the decree issued on 17th March, 2025 has been settled in full.
 - h. That costs of the application be provided for.
- 2. The application sets out on its face the grounds upon which it is brought, and is predicated on the annexed supporting affidavit of Jackline Mwanthi, the Respondent's Vice-President (Finance and Administration) sworn on 10th April, 2025. It is deponed in the said supporting affidavit:-
 - a. that Judgment in the suit herein was entered against the Respondent on 18th February, 2025 for the sum of Kshs.452,336.40 and 50% of costs, and that a decree was subsequently extracted (issued) on 17th March, 2025 for Kshs.524,598.90 after tabulation of costs by the Claimant's Advocate.
 - b. that the Respondent/Applicant made payment of the claimed (decreed) sum, less the requisite statutory deductions as guided by Section 49(2) of the Employment Act; paying a sum of Kshs.380,042.50.
 - c. that aggrieved by the said statutory deductions, the Claimant engaged the services of the Interested Party herein (an Auctioneer) to recover the deducted amounts; which is a malicious move as the Claimant is aware that statutory deductions are mandated by law.
 - d. that the Respondent/Applicant's assets are at risk of sale, yet the attachment was misguided and malicious.
- 3. The application is opposed by the Claimant vide a replying affidavit sworn by him on 29th April, 2025. It is deponed in the said replying affidavit:-
 - a. that the application is frivolous and is an abuse of the Court's process as the decretal sum has not been paid in full.
 - b. that the Judgment sum was Kshs.452,336.40 while the 50% awarded costs were subsequently tabulated by the Claimant's Advocate at Kshs.72,252.50, making a total of Kshs.524,598.90.
 - c. that despite being aware of the decretal sum payable, the Applicant paid a partial payment of Kshs.380,042.50, and argued that it had deducted statutory deductions for 3 months to the tune of Kshs.144,556.40.
 - d. that to date, a balance of Kshs.144,556.40, being the purported statutory deductions, remains unsettled; hence execution for the said balance.
 - e. that the statutory deductions by the Respondent are erroneous as there is no longer an employer/employee relationship between the parties herein, the same having been extinguished when the Respondent unfairly dismissed the Claimant in October 2020.
 - f. that the Respondent cannot purport to act as the Claimant's agent in respect of PAYE when the Claimant is not an employee, and that PAYE is only chargeable on income earned in the course of employment. That compensation accruing out of a Court award is not an income within the meaning of the Income Tax Act.
 - g. that the Applicant has to date not produced any evidence to prove that the amount deducted was remitted to Kenya Revenue Authority.



- h. that even if statutory deductions were to be charged, they should be based on the tax regime which was applicable at the time of the Claimant's termination, being October 2020.
 - i. that at the time of the Claimant's termination, there were tax reliefs and the tax regime was different; and that the Claimant's salary was not subject to affordable housing deductions.
 - j. that the Claimant's employment contract provided that the Claimant's consolidated salary was only subject to PAYE, NHIF and NSSF.
 - k. that the Applicant has deducted affordable housing tax, but has not matched it up as is statutorily required.
 - l. that the Claimant is currently tax compliant, and deduction of statutory deductions shall lead to double taxation.
4. The Respondent/Applicant filed a further affidavit sworn by Jackline Mwanthi on 5th May, 2025, and stated that the deductions in issue were remitted together with those of other members of staff in March 2025.
5. Documents annexed to the said further affidavit include copies of the Claimant's payslip for the month of September 2020; which shows the statutory deductions to which the Claimant's salary was subject as PAYE, NSSF and NHIF at Kshs.28,925/=, 1,700/= and 1,080/= respectively.
6. I have perused the Court's Judgment herein, shown to have been delivered on 18th February, 2025 (Dr. Jacob Gakeri, J), a copy whereof is annexed to the Applicant's supporting affidavit. The Court rendered itself as follows:-
- “ . . . In the upshot, Judgment is entered in favour of the Claimant against the Respondent as follows:-
- 1. Declaration that termination of the Claimant's employment by the Respondent was unfair.
 - 2. Equivalent of there (3) months' gross salary Kshs.452,336.4..
 - 3. The Claimant is awarded 50% of the costs.”
7. Section 49(2) of the [Employment Act](#) provides as follows:-
- “(2) Any payments made by the employer under this Section shall be subject to statutory deductions.”
8. From the facts presented by both parties, it is a common ground that the sum awarded to the Claimant in compensation was Kshs.452,336.40, being the equivalent of the Claimant's 3 months' gross salary. It is this sum that ought to have been subjected to statutory deductions as applied to the Claimant at the time of termination of his employment, pursuant to Section 49(2) of the [Employment Act](#).
9. The costs of the suit awarded to the Claimant by the Court ought not to be, or to have been subjected to statutory deductions. Costs of the suit, in their nature, are just that, costs. They are basically meant to refund expenses incurred by a winning litigant in presenting and prosecuting or defending a suit. Costs are not part of the reliefs set out in Section 49(1) of the



Employment Act, to which Section 49(2) applies. The Respondent appears to have subjected the entire decretal sum, inclusive of costs, to alleged statutory deductions.

10. Further, the Respondent appears to have subjected the amount awarded to the Claimant to statutory deductions that were not applicable to the Claimant at the time of termination of employment, such as Housing Levy and SHIF. The statutes providing for the said two statutory deductions were not in existence as at October 2020 when the Claimant's employment was terminated. The law does not operate in retrospect. PAYE should have been calculated based on the tax regime applicable at the time of termination of the Claimant's employment. NSSF deductions should also have been calculated based on the rates applicable at the time of termination of the Claimant's employment.
11. Any monetary relief granted by the Court pursuant to Section 49(1) must always be subjected to statutory deductions applicable to the employee and/or former employee at the time of termination and/or accrual of the cause of action. The Court of Appeal stated as follows in *Directline Assurance Co. Ltd – vs – Jeremiah Wachira Ichaura [2016] (eKLR)*:-

“It is trite law that any lump sum payment for say, terminal dues, is subject to statutory deductions for the years taken into account. Indeed, in *Simon Deakin and Gelian S. Morris, Labour Law* at page 405, the writers observe that it is the net salary, salary after deduction of income tax, National Assurance contribution and contribution to pension schemes or similar benefits, that is to be used to compute any damages due to the employees. Accordingly, the Court erred in not subjecting the award to the mandatory statutory deductions.”
12. Further, the Court of Appeal stated as follows in *Rift Valley Railways (K) Limited – vs – Kiyu Kalakhe Boru [2015] eKLR*:-

“We do not therefore discern injudicious exercise of discretion nor consideration of extraneous factors. In which event then, the amount awarded was fair. This is of course subject to the statutory deductions that were to apply as at the time of the award. Section 49 of the Employment Act provides that “Any payments made by the employer under this Section shall be subject to statutory deductions.”
13. In view of the foregoing, and having considered written submissions by both parties herein, the Notice of Motion dated 10th April, 2025 partly succeeds, and is hereby determined in the following terms:-
 - a. There will be a stay of execution of the Court's decree herein, and the warrant of attachment and warrant of sale issued herein are hereby lifted and are re-called.
 - b. The Respondent/Applicant shall, within 14 days of this Ruling, re-compute the statutory deductions deductible from the amount of compensation awarded to the Claimant in the Court's Judgment delivered on 18th February, 2025, based on the statutory deductions to which the Claimant's salary was subject at the time of termination of employment, and shall pay to the Claimant any amount of money wrongly deducted; failing which execution shall issue for recovery of such wrongly deducted money.
 - c. Each party will bear its own costs of the application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER 2025



AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Miss Wambui for the Claimant/Respondent

Miss Kiiru for the Respondent/Applicant

