



REPUBLIC OF KENYA



KENYA LAW
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Sakam Enterprises Limited v Wando (Employment and Labour Relations Appeal E026 of 2025) [2025] KEELRC 2917 (KLR) (23 October 2025) (Judgment)

Neutral citation: [2025] KEELRC 2917 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
EMPLOYMENT AND LABOUR RELATIONS APPEAL E026 OF 2025
MA ONYANGO, J
OCTOBER 23, 2025

BETWEEN

SAKAM ENTERPRISES LIMITED APPELLANT

AND

TECLA MERCY WANDO RESPONDENT

(Being an appeal from the ruling in the application dated 7th March, 2024 by Hon. Mukabi Kimani, delivered on 18th March, 2025 in Eldoret MCELRC No. E 134 of 2020: TECLA MERCY WANDO VERSUS SAKAM ENTERPRISES LIMITED)

JUDGMENT

1. The Respondent herein was an employee of the Appellant and filed a suit against the Appellant seeking compensation for unfair termination of her employment. The parties reached a settlement in the matter in which judgment was entered for the Respondent against the Appellant in the sum of Kshs. 2,600,000. A consent on settlement of the decretal sum was agreed upon by the parties and a consent entered into on 16th December, 2022. Subsequently another consent was entered into by the parties on 29th January, 2024 for payment by instalments. According to the Appellant, it paid the decretal sum through several instalments, the final payment having been made to the Respondent on 4th March, 2024 in the sum of Kshs. 374,059.85 after deducting PAYE, withholding tax on interest and recovery of a loan advanced the Respondent to the Appellant of Kshs. 175,000.
2. The Respondent was unhappy with the deductions made from the decretal sum and issued a notice of intention to execute. Consequently the Appellant filed an application dated 7th March, 2024 at the trial court seeking orders of stay of execution and to have the matter marked as settled as it had satisfied the trial court's decree.
3. The trial court rendered its ruling on the application on 18th March, 2025, dismissing the same. It is against the said ruling that the Appellant has lodged the instant appeal.



4. In the Memorandum of Appeal the Appellant sets out the following grounds of appeal:
- a. That the learned trial Magistrate erred in law when he made the finding that the court ward/ decretal sum herein was NOT subject to statutory deductions i.e P.A.YE.
 - b. That the learned trial Magistrate erred in law by making a finding that the Respondent owes the Kshs 650,940.40/=, monies which were deducted by her employer the Appellant herein, from the decretal sum and which were remitted to Kenya Revenue Authority as P.A.Y.E on the 7th of March 2024.
 - c. That the learned trial Magistrate erred in law and fact by making a finding that the Appellant had NOT fully complied with the decree of the trial court.
 - d. That the learned trial Magistrate erred in law and in fact by failing to make a determination on the issue of whether the Appellant owed the Respondent Kshs. 175,000/=, a loan advanced to the Respondent during her employment at the Appellant company.
 - e. That the trial Magistrate erred in law and fact by subjecting the Appellant to double jeopardy by directing that it pays the Respondent the remainder of the decretal sum yet the said sum had already been remitted to Kenya Revenue Authority as PAYE.
 - f. That the trial Magistrate erred in law and fact by taking into account irrelevant factors and disregarding relevant factors and the submissions of the Appellant thereby arriving at an erroneous decision.
5. The Appellant prays for the following orders:
- a. That this Appeal be allowed with costs and the trial court ruling delivered on 18th of March 2025 be set aside unconditionally.
6. The court decided, with the consent of the parties, to have the appeal disposed of summarily by way of written submissions as it did not involve any issue in the substantive pleadings and therefore did not require the Appellant to file a record of appeal. Both parties filed their respective submissions.

Appellant's Submissions

7. In its submissions dated 9th May 2025, the Appellant framed the issues for determination to be: -
- i. Whether court awards are subject to statutory deductions.
 - ii. Who should bear the costs of the appeal?
 - iii. Whether or NOT the decree of the trial Court has been settled in full.
8. On the first issue, the Appellant submitted that Section 49(2) of the *Employment Act* is clear that any payments made by an employer under that section are subject to statutory deductions.
9. The Appellant maintained that the payments contemplated under Section 49(2) include wages which the employee would have earned had proper notice been given, wages due for the period actually worked, and any other loss arising between the date of dismissal and the expiry of the notice period.
10. The Appellant further submitted that an employee's wages are subject to statutory deductions such as PAYE and loan recoveries, whether paid in a lump sum (as in this case) or on a monthly basis.
11. It was further submitted that Section 37(1) of the *Income Tax Act*, Cap 470, provides that emoluments paid to an employee are subject to income tax.



12. On the second issue, the Appellant submitted that the consent dated 29th January 2024 for the payment of Kshs. 2,600,000 was fully complied with. The Appellant submitted that paragraph 1 of the consent was satisfied on 29th January 2024, and this payment is not in dispute. With respect to paragraph 2, the Appellant explained that compliance was achieved through a series of payments made on different dates. It contended that on 4th March 2024, the Appellant issued a cheque of Kshs. 374,059 to the Respondent, being the amount due after deduction of PAYE; on 7th March 2024, the Appellant remitted to the Kenya Revenue Authority PAYE and 15% withholding tax on interest amounting to Kshs. 650,940.15, and further deducted a staff loan advanced to the Respondent of Kshs. 175,000.
13. The Appellant further deposed that a total of Kshs. 1,774,059.85 was paid to the Respondent's counsel as follows: Kshs. 200,000 on 31st January 2023, Kshs. 200,000 on 30th April 2023, Kshs. 1,000,000 on 29th January 2024, and Kshs. 374,059.85 on 4th March 2024. The Appellant stated that, in addition to these payments, Kshs. 175,000 was deducted as a loan and Kshs. 650,940.15 was remitted to KRA, bringing the total payments to Kshs. 2,600,000 in full satisfaction of the consent.
14. On this basis, the Appellant submitted that it had fully complied with the consent order and settled the entire decretal sum due to the Respondent and urged to allow the appeal with costs.

Respondent's Submissions

15. On its part, the Respondent identified the issues for determination to be: -
 - i. Whether the Appellant was entitled to retain part of the decretal sum on account of PAYE after a consent was recorded
 - ii. Whether the Appellant was entitled to deduct Kshs 175,000 from the decretal sum on account of an outstanding debt
 - iii. Whether the Appellant has been subjected to double jeopardy.
16. On the first issue, the Respondent submitted that once parties entered into a consent on settlement, the same became binding upon them unless set aside or varied by the Court. The Respondent argued that the Applicant is estopped, under the doctrine of estoppel, from claiming compliance with the consent when in fact it has not fully honored its terms.
17. The Respondent contended that the parties in this matter voluntarily entered into a consent, which has the force of a court order. Consequently, one party cannot unilaterally depart from its terms at convenience. It was submitted that it would be unjust for the Appellant to deny the Respondent the fruits of her judgment through such conduct. The Respondent thus maintained that, as a matter of law, parties are bound by their consent, and the Applicant has an obligation to settle the remaining balance of the decretal sum.
18. The Respondent further submitted that although the Appellant alleged to have deducted part of the decretal sum as PAYE, there is no evidence to show that the Kenya Revenue Authority (KRA) has ever demanded payment of such sums from the Appellant. It was also argued that there is no certified tax computation or audit showing how the alleged deductions were calculated, nor any proof that the Appellant has actually remitted the same to KRA on behalf of the Respondent.
19. In response to the Appellant's contention regarding Section 49(2) of the *Employment Act* and Section 5(2)(a) of the *Income Tax Act* on the applicability of statutory deductions, the Respondent cited Section 3(1) of the *Income Tax Act* in support of the position that the said provisions relate to income earned from employment and not to a decretal sum arising from a court judgment. Reliance was placed



on the decisions in *A.M. Bahaji & Company Limited v Kenya Ports Authority* (2020) eKLR, *Ocean Freight (E.A.) Limited v Commissioner of Domestic Taxes* (2020) eKLR, and *Ibrahim Manyara v Registered Trustees of Agricultural Society of Kenya (A.S.K.)* (2014) eKLR.

20. The Respondent therefore submitted that the decree in this matter is not subject to any tax deductions and that the Appellant had no lawful authority to withhold any portion of the decretal amount. It was emphasized that the decree arose from a consent judgment, and the Respondent had a legitimate expectation that the Appellant would settle the full amount agreed upon. Accordingly, the Respondent urged the Court to uphold the principle that the Appellant is bound to pay the entire decretal sum without deductions.
21. On the second issue, the Respondent submitted that the Appellant was improperly introducing new matters that were never raised at the trial stage. It was argued that the Statement of Response to the Memorandum of Claim filed on 5th October 2020 through the firm of Dulo & Company Advocates does not contain a counterclaim or set-off.
22. It was the Respondent's submission that, in the absence of a set-off or counterclaim, the Appellant is estopped from alleging that the Respondent owes it any money. It was contended that it would be unjust to deduct any amount from the decretal sum when the issue of debt was not a subject of determination in the trial court. The Respondent further submitted that if the Appellant believes the Respondent is indebted to it, it is at liberty to institute separate proceedings before a court of competent jurisdiction to recover the same.
23. The Respondent asserted that the Appellant's conduct in raising new issues at this stage is actuated by bad faith and intended to frustrate the Respondent's enjoyment of the fruits of her judgment.
24. With regard to the third issue, namely whether the Appellant has been subjected to double jeopardy, the Respondent submitted that the primary suit was determined in 2021, after which the parties recorded various consents, including one withdrawing an appeal. It was contended that despite those consents and the Respondent's legitimate expectation of full compliance, the Appellant has filed the present application seeking a declaration that it has already satisfied the judgment, thereby acting in bad faith.
25. The Respondent further argued that the alleged tax computation produced by the Appellant bears only its letterhead, without indicating the identity or capacity of the person who prepared it. It was also submitted that although a payment slip was annexed, the attached KRA receipt is faint and does not disclose the actual amount remitted.
26. In the end, the Respondent maintained that the learned trial magistrate properly addressed the issues before her, correctly applied the law, and reached a sound and reasoned decision based on the material presented.
27. Accordingly, the Court was urged to dismiss the appeal with costs.

Determination

28. Having considered the grounds of appeal and the submissions of the parties, the only issue that falls for determination is whether the decretal sum in this suit is subject to taxation.
29. Section 49(2) of the *Employment Act* provides that:

Any payments made by the employer under this section shall be subject to statutory deductions.



30. The payments referred to are set out in section 49(1) as follows:
- (a) the wages which the employee would have earned had the employee been given the period of notice to which he was entitled under this Act or his contract of service;
 - (b) where dismissal terminates the contract before the completion of any service upon which the employee's wages became due, the proportion of the wage due for the period of time for which the employee has worked; and
 - (c) any other loss consequent upon the dismissal and arising between the date of dismissal and the date of expiry of the period of notice referred to in paragraph (a) which the employee would have been entitled to by virtue of the contract; or the equivalent of a number of months wages or salary not exceeding twelve months based on the gross monthly wage or salary of the employee at the time of dismissal.
31. In the ruling of the trial court that is the subject of this appeal, the court observed as follows:
- “In the instant application, the Applicant claims it has fully complied with the decree and consent order dated 29th January 2024 and that the Respondent is aggrieved by the decision of the Applicant to deduct/withhold and remit Kshs. 688,491.60/= to KRA as she allegedly claims she ought to have been paid full decretal sum without any deductions. Further that the Applicant deducted Kshs.175,000/= loan advanced to the Respondent at the time she worked with the Applicant company. I was told that the Applicant is compelled under Section 37 as read together with Section 35(3A) and Section 5(2a) of the *Income Tax Act* and Section 95 of the *Tax Procedures Act*. I took time to read the stated provisions under the *Income Tax Act*, whereby Section 35(3A) concerns itself with dividends which is chargeable to tax, while Section 37 *Income Tax Act* concerns itself with deduction of tax from emoluments by an employer. In the present matter, this was a dispute between a former employee and former employer. I therefore see no relevance of those provisions under the *Income Tax Act* in this matter.
32. The court thereafter held as follows:
- In the instant matter, judgment and decree was entered on 29th November 2021 and parties further entered into another consent on 29th January 2024. This application was filed on 7th March 2024. The Applicant does not offer anything in form of security it is wishing to deposit, instead they go round in circles making wild claims of the Claimant's income tax purportedly withheld by them to pay KRA. By the same token, the Applicant claims to have complied with the consent order and seek this matter is closed yet they are well aware that they have not fully settled the decretal amount.
33. The distinction by the trial court between an employee/employer and former employee/employer is irrelevant because all payments made under section 49 are paid to former employees after the employment relationship has ended. No payments under section 49 are made while an employee is still in employment. The section starts with the following words: “(1) Where in the opinion of a labour officer summary dismissal or termination of a contract of an employee is unjustified, the labour officer may recommend to the employer to pay to the employee any or all of the following...”
34. In any event employment benefits can be made both while the employment relationship is subsisting or after it has ended. Whether the employment relationship is subsisting or has ended, payments are



- subject to income tax. Section 37 of the *Income Tax Act* therefore applies to payments made under section 49 of the *Employment Act*.
35. Section 37 of the *Income Tax Act* which provides: -
- “An employer paying emoluments to an employee shall deduct therefrom and account for tax thereon to such extent and such manner as may be prescribed.”
36. Further, the Income Tax (P.A.Y.E) Rules define employee as:
- “employee” includes an individual receiving emoluments in respect of any employment, office, appointment or past employment.
- [Emphasis added]
37. The trial court further took issue with the deduction in respect of a loan advanced to the Respondent.
38. Section 19(1) of the *Employment Act* authorizes an employer to make statutory deductions from the wages of an employee. Section 19(1)(f) allows an employer to deduct “any amount the deduction of which is authorised by any written law for the time being in force, collective agreement, wage determination, court order or arbitration award” while section 19(1)(h) authorizes an employer to deduct “an amount due and payable by the employee under and in accordance with the terms of an agreement in writing, by way of repayment or part repayment of a loan of money made to him by the employer, not exceeding fifty percent of the wages payable to that employee after the deduction of all such other amounts as may be due from him under this section”.
39. Section 19(4) further provides:
- (4) An employer who deducts an amount from an employee’s remuneration in accordance with subsection (1)(a), (f), (g) and (h) shall pay the amount so deducted in accordance with the time period and other requirements specified in the law, agreement court order or arbitration as the case may be.
40. From the foregoing, it was the duty of the Appellant as an employer/former employer to deduct and remit income tax from the payments due to the Respondent which were in relation to the Respondent’s employment.
41. Section 49(2) of the *Employment Act* provide that any payments made by the employer under this sections shall be subject to statutory deductions.
42. In *Directline Assurance Co. Ltd v Jeremiah Wachira Ichaura* [2016] eKLR the court held that it is trite law that lump sum payments, such as terminal dues, are legally subject to statutory deductions. In *Co-Operative Bank of Kenya Ltd v Erastus Kuhara Mureithi* [2013] eKLR the court established that under section 37 of the *Income Tax Act*, employers are responsible for deducting and remitting taxes on salaries, emoluments, and allowances. In *Joseph Ogonda Omondi v SBI International Holding AG Kenya* [2015] eKLR, the court reaffirmed that under Section 49(2) of the *Employment Act*, any monetary award under Section 49 is subject to statutory deductions. Similarly, *China Road & Bridge Corporation v Commissioner of Domestic Taxes*, the court held that employers must ensure all statutory deductions are made and remitted promptly.
43. From the foregoing it is clear that courts have consistently upheld taxation on employment-related awards, reinforcing that the judgment sum is lawfully subject to PAYE deductions.



44. In conclusion, I find that the trial court erred in dismissing the Appellants application dated 7th March, 2024. I therefore set aside the ruling of the trial court and substitute the same with an order allowing the application.
45. I accordingly hold that the Appellant has complied with the court's decree and consent dated 29th January, 2024 in Eldoret MCELRC No. E134 of 2020: Tecla Mercy Wando v Sakam Enterprises Limited.
46. Each party shall bear its costs of this appeal and the application dated 7th March, 2024.

DATED, DELIVERED AND SIGNED THIS 23RD DAY OF OCTOBER, 2025.

M. ONYANGO

JUDGE

