

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
ELRC CAUSE NO. E567 OF 2021

DR. NELSON ODHIAMBO.....CLAIMANT
VERSUS
BIODEAL LABORATORIES LIMITED.....RESPONDENT

RULING

In the notice of motion application dated 5/5/2025 the only issues for determination is whether interest and costs awarded by the court upon an award of compensation in terms of section 49(1)(c) of the Employment Act, 2007 are subject to tax deduction and if the attachment and proclamation made despite settlement of decretal sum was warranted.

Section 49(2) of the Employment Act, 2007 provides

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

Section 3(1) and (2) of the Income Tax Act provides: -

“3. Charge of tax

(1) Subject to, and in accordance with this Act, a tax to be known as income tax shall be charged for each year of income upon all the income of a person, whether resident or non-resident, which accrued in or was derived from Kenya.

(2) Subject to this Act, income upon which tax is chargeable under this Act is income in respect or –

(a) gains or profit from –

(i) any business, for whatever period of time carried on

(ii) any employment or services rendered.

(iii) any right granted to any other person for use or occupation of property;”

Furthermore section 5(2) of the Income Tax Act provides: -

“(2) For the purposes of section 3(2)(a)(ii) “gains or profits” includes –

(a) any wages, salary, leave pay, sick pay, payment in lieu of leave, fees, commission, bonus, gratuity, or subsistence, travelling, entertainment or other allowance received in respect of employment or services rendered and any amount so received in respect of employment or services rendered in a year of income other than the year of income in which it is received shall be deemed to be income in respect of that other year of income:”

In the Court of Appeal case of *Kioko Joseph (suing as the legal representative of the Estate of Joseph Kilinda) versus Bamburi Cement Limited [2017]* the court held: -

“9. Section 19(1) of the Employment Act allows an employer to make deductions which are authorized by any written law from employee’s salary. The authorized deductions include statutory

deductions and damages issued for wrongful termination as envisioned under section 49 of the Employment Act.”

The court has considered the notice of motion application by the Applicant/Judgment Debtor dated 5/3/2025 and is satisfied that the Applicant has satisfied the decretal sum except for deduction and remission of income tax on costs and interest which was done in error.

This error did not however justify the decree holder to issue warrants of attachment having received the entire principal decretal amount less statutory deduction duly remitted to the mandated government agencies and for no gain of the Applicant.

The Applicant however had the obligation to first establish whether Income Tax is deductible on costs and interest and therefore deducted and remitted the same at their own peril.

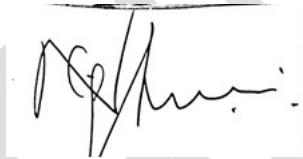
The court grants the application to set aside and quash the warrants of attachment and sale of movable property in execution of decree of money issued to Nairobi Connection Services Auctioneers on 27/2/2025 and the proclamation notice issued to the Applicant/Judgment Debtor on 28th February 2025.

The Applicant is however obligated to refund the deductions made to the decretal sum paid to the Respondent decree holder with respect of costs and interest remitted irregularly to KRA by the Applicant.

In the final analysis an order is issued:

- (a) Setting aside the warrants of attachment and sale of movable property – execution of Decree of money issued to Nairobi Connection Services Auctioneers on 27/2/2025 and the Proclamation Notice issued to the judgment Debtor on 28/2/2025.
- (b) The Applicant to refund statutory deductions made in respect of costs and interest awarded to the Respondent/Decree Holder and erroneously remitted to KRA by the Applicant.
- (c) Each party to bear the costs of this application.

Dated at Nairobi this **13th Day of November 2025.**



Mathews Nduma
JUDGE

Appearance:

M/s. Onyony for Applicant/Judgment Debtor

M/s. Ochieng for Respondent Decree/Holder

Mr. Kemboi – Court Assistant