

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT KAKAMEGA
APPEAL NO. E008 OF 2023

ANNE NAMBANE WANYAMA APPELLANT

VERSUS

MALAVA FINANCIAL

SERVICES ASSOCIATION RESPONDENT

(Being an appeal from the judgment and decree issued in Butali SPMC ELRC No. 1 of 2022 by Hon. R. S. Kipng'eno (SPM) delivered on 3rd October 2023)

(BEFORE HON. JUSTICE DAVID NDERITU)

RULING

I. INTRODUCTION

1. In a judgment dated and delivered on 16th April 2024 (Keli J) this appeal was allowed in the following terms –

- i. One-month notice pay of Kshs. 27,023.95.*
- ii. Service pay award of 94,583.86.*
- iii. Unpaid salary of December and January of Kshs.54,047.90.*
- iv. Underpayment award of Kshs.461,624/-.*
- v. The counterclaim award is set aside for lack of proof on balance of probabilities on the actual loss attribute to the Appellant.*

vi. Certificate of service to issue in terms of Section 51 of the Employment Act.

2. In a notice of motion dated 25th April 2025 (the application) filed through Reece Mwani & Company Advocates the appellant/applicant/decreed-holder is seeking for the following orders –

- 1. THAT the application herein be certified urgent and service of the application be dispersed within the first instance.**
- 2. THAT Garnishee orders nisi do issue against the Garnishee (National Bank, Kakamega Branch) to attach any monies held by them in favour of the respondent/judgment debtor's account number 01242070601000 held at the Garnishee National Bank Kakamega Branch and any other account by the aforesaid held at the Garnishee bank in satisfactions of balance of the decretal amount being Kshs149,517.71 in this matter.**
- 3. THAT Garnishee do appear before court to show cause why they should not pay to the decree holder Kshs. 149,517.71 plus costs from the amount held by the Respondent/Judgment debtor at their account number 01242070601000 at the Garnishee bank and/or any other account held by the aforesaid.**
- 4. THAT the Garnishee orders nisi be made absolute.**
- 5. THAT costs be provided for.**

3. The application is expressed to be brought under the provisions of **Sections 1A, 1B, & 3A of the Civil Procedure Act & Order 23 Rules 1, 2, 3, 4, 9, 10, & Order 51 Rule 1 of the Civil Procedure Rules**. The application is based on the grounds stated on its face and supported with the affidavit of Anne Nambane Wanyama, the applicant, sworn on even date with one annexure thereto.
4. In opposition to the application the respondent through M. Kiveu Advocates filed a replying affidavit sworn by Mukhwana Ito, a manager with the respondent, on 9th May 2025 with several annexures thereto.
5. The garnishee through Otieno, Yogo, Ojuru & Company Advocates filed a replying affidavit sworn by Kettley Onjiri, an assistant branch manager with the garnishee at Kakamega, on 9th May 2025.
6. By consent, the application was canvassed by way of written submissions. Counsel for the applicant Mr. Mukhabani filed written submissions dated 21st August 2025, counsel for the respondent Mr. Kiveu for the respondent filed submissions dated 9th October 2025, and Mr. Odhiambo for the garnishee filed submissions dated 9th September 2025.

II. THE EVIDENCE

7. In the supporting affidavit it is deposed that the applicant has a judgment against the respondent in the sum of Kshs637,291.71 as per the decree following the judgment of Keli J alluded to above.

8. It is deposed that on 18th October 2024 the respondent paid a sum of Kshs487,762/= vide a cheque a copy hereof is annexed to the affidavit leaving a balance of Kshs149,517.71. It is further deposed that the respondent has failed, refused, and or neglected to settle this balance hence the application herein to attach the account held by the respondent with the garnishee bank.
9. In the replying affidavit by the respondent it is deposed that the withheld monies are to be applied into statutory deductions and loan balances owed by the applicant, in the sum of Kshs63,757.90 and Kshs85,760/= respectively.
10. In the replying affidavit for the garnishee it is deposed that the balance in the impugned account in the name of the respondent was Kshs2,022,277.75 as of 5th May 2025. A certificate of balance is annexed to that effect.
11. It is obviously deposed that the above balance is capable of off-setting the amount claimed by the applicant and that no debits have been made in the account since the issuance of the garnishee order nisi on 29th April 2025.

III. SUBMISSIONS BY COUNSEL

12. Counsel for the applicant submitted that the fact of the judgment against the respondent in the sum of Kshs637,279.71 is not in dispute as per the decree on record. It is further submitted that out of the above sum the respondent paid a sum of Kshs487,762/= by way

of a cheque leaving a balance of Kshs149,517.71. It is submitted that it is for the foregoing reason that the applicant has filed this application to enforce payment of the balance due and payable.

13. It is submitted that the judgment of the court was explicit and no money was to be withheld by the respondent whatsoever. It is submitted that the garnishee has in the replying affidavit confirmed that there is money in the account capable of satisfying the balance of the decretal sum that is now long overdue.
14. It is further submitted that the court should ignore and or expunge the correspondences between the counsel of the parties that have been annexed to the replying affidavit by the respondent as the said letters were exchanged purely and entirely on without prejudice basis.
15. It is submitted that there is no appeal or application for review filed against the judgment by Keli J and as such the decree remains unsatisfied to the extent stated above hence the need for the court to grant orders as sought in the application.
16. On the other hand, counsel for the respondent submitted that as per the replying affidavit filed the amounts now claimed by the applicant in the application were applied in payment of statutory deductions (PAYE) and settlement of a loan obligation that the applicant owed to the respondent in the sums of Kshs63,757.90 and Kshs85,760/= respectively.

17. It is further submitted that Section 49(2) of the Employment Act is couched in mandatory terms that statutory deductions shall be made on all awards made to an employee under that law.
18. It is submitted that the above settlement was discussed in correspondences between advocates for the parties and it was agreed that the cheque released to the applicant's counsel was in full settlement of the amount due and payable to the applicant.
19. Basing submissions on the replying affidavit filed, counsel for the garnishee submitted that as at 5th May 2025 Account No. 01242070601000 in the name of the respondent with it had a balance of Kshs2,022,277.75 and no debit transactions were allowed in the account since the issuance of the garnishee order nisi by the court. It is submitted that there are sufficient funds in the account to settle the claimed sum of Kshs149,517.71.
20. The court is urged to grant to the garnishee costs of the application.

IV. ISSUES FOR DETERMINATION

21. The court has gone through the application, the supporting affidavit thereof, the replying affidavits, and the submissions filed by counsel for all the parties. In my view, there is only one main issue for determination - *Whether the application has merits.*

V. ANALYSIS & DETERMINATION

22. The orders issued by Keli J in the judgment dated and delivered on

11th July 2023 are reproduced in the introductory part of this judgment. No appeal or review was filed against the said judgment. I have studied the said judgment and the court did not order that any deductions, statutory or otherwise, be made from the amount awarded.

23. Prima facie, there was an incidental omission by the court in not making an order for statutory deductions. The court shall *suo mottu* amend the judgment under **Rule 75 of the Employment and Labour Relations Court (Procedure) Rules** and allow the respondent to retain the sum of Kshs63,757.90 as statutory deductions and hence only pay Kshs85,759.81 to the applicant.
24. However, the court (Keli J) did not allow or grant the respondent any right to withhold any monies in purported settlement of the alleged loan balances. The respondent cannot again act unilaterally and withhold the said sums.
25. It is clear that the correspondences between counsel for the parties annexed to the replying affidavit were exchanged on without prejudice basis and counsel for the applicant notified that he was to consult his client, the applicant, for a final word on the amounts due. The said letters did not amount to a settlement or undertaking by counsel for the applicant that the cheque was in settlement of the account.
26. The court has said enough in demonstrating that the application by

the applicant has merits and the same shall be allowed as hereunder.

VI. ORDERS

27. Flowing from the foregoing, the court makes the following orders –

- a) The application by the applicant dated 25th April 2025 has merits.*
- b) The decree nisi issued by the court on 29th April 2025 is hereby made absolute to the extent below.*
- c) That out of the monies held by the garnishee in the respondent's Account No.01242070601000 a sum of Kshs85,759.81 shall forthwith be released to the advocates for the applicants.*
- d) The respondents shall meet the costs of the application to applicant and the garnishee.*
- e) The costs in (d) above shall be agreed and or taxed as soon as possible and the same shall be settled from the funds in the above account for purposes of bringing this matter to a final and logical conclusion.*

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT
KAKAMEGA THIS 20TH DAY OF NOVEMBER, 2025.**

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DAVID NDERITU
JUDGE