

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT AT NAIROBI
CAUSE NO. E272 OF 2023
ALEXANDER JOHN FRANK STUBBS
CLAIMANT
v
FOURTH GENERATION CAPITAL LTD
RESPONDENT**

**EMPLOYMENT AND LABOUR RELATIONS COURT
RULING NO. 4**

1. Judgment was delivered in favour of Alexander John Frank Stubbs (the Claimant) on 9 April 2025.
2. Since then, the Cause has taken twists and turns.
3. On 25 August 2025, Fourth Generation Capital Ltd (the Respondent) filed a Motion of even date seeking a stay of execution, among other orders.
4. The Duty Court granted an interim stay of execution.
5. When the parties appeared for an *inter-partes* hearing on 22 September 2025, the Court extended the stay ahead of the hearing and determination of the Motion on 27 October 2025.

6. Despite the stay order, the Claimant moved to execute, prompting the Respondent to move the Court again on 24 September 2025, seeking a stay of the execution and an order varying orders issued on 22 September 2025 on the ground that

the decree had been settled.

7. The Court interdicted the execution the same day, and directed the Claimant to respond to the new Motion ahead of further proceedings on 27 October 2025.

8. Apparently, the Claimant proceeded with the execution, and the Respondent filed another Motion dated 24 October 2025, seeking to void the execution and the release of an attached motor vehicle.

9. On 27 October 2025, the Court heard brief oral submissions from the parties and found that the attachment of the motor vehicle was unlawful and ordered its immediate release.

10. The parties also informed the Court that the outstanding issue was the deduction of statutory deductions by the Respondent while settling the decretal amount.

11. The Court directed the parties to file and exchange submissions on whether it was legal for the Respondent to deduct statutory dues from the award made to the Claimant.

12. The Respondent filed its submissions on 3 November 2025, and the Claimant on 13 November 2025.

13. In its submissions, the Respondent relied on *Egerton University v Musyoka* (2025) KEELRC 1851 (KLR) where the Court held that by virtue of section 37 of the Income Tax Act, a consent award was subject to income tax.

14. The Respondent further cited *Soni v Gudka & 2 Ors (Office Bearers of the Board of Management of Pandya Memorial Society); Kinyua t/a Makini Auctioneers Agencies (Interested Party)* (2024)

KEELRC 2791 (KLR) and *Kathindi v Kenya Film Commission* (2024) KEELRC 13605 (KLR).

15. On his part, the Claimant cited *Ibrahim Manyara v registered Trustees of the Agricultural Society of Kenya* (2014) eKLR and *Muema Kitulu t/a Muema Kitulu & Co. Advocates v the County Secretary, County Government of Kitui* (2020) eKLR to urge that monies awarded in decrees could not be subjected to income tax.

16. The Claimant also submitted that the statutory deductions referred to in section 49(2) of the Employment Act, 2007, were restricted to awards by a Labour Officer and not by the Courts.

17. Further, the Claimant urged that after the end of an employment relationship, awards made as compensation could not qualify as income under section 3(2)(a)(ii) of the Income Tax Act.

18. The Court has considered the Motion and submissions and is of the view that the determinative question is *whether the remedies*

set out in section 49(1) of the Employment Act are subject to statutory deductions under the law?

19. The Court awarded the Claimant compensation and pay in lieu of notice totalling Kshs 2,800,000.

20. The Respondent then prepared payment and deducted Kshs 1,020,041/- on account of statutory deductions (PAYE, NSSF, Social Health Insurance Fund and Housing Levy) and paid to the Claimant's bank account Kshs 2,011,233/- on 22 August 2025 (the payment included taxed costs).

PAYE on compensation for unfair termination of employment

21. Section 49(2) of the Employment Act, 2007, provides that any payments made by an employer upon a finding of unfair termination of employment should be subjected to statutory deductions.

22. Section 49(1) of the Employment Act, 2007 contemplates an award or recommendation by a Labour Officer to an employer to pay an employee after a finding of unfair termination of employment, compensation, wages equivalent to the notice period and earned wages.

23. However, section 50 of the Act extends the jurisdiction to grant the said remedies to the Employment and Labour Relations Court.

24. In other words, a contextual reading of sections 49 and 50 of the Employment Act leads to only one logical conclusion, that is, a Labour Officer can recommend to an employer to fulfil the remedies for unfair termination of employment, while the Court can award the remedies.

25. The two awards to the Claimant were made under section 49(1)(a) and (c) of the Employment Act, 2007

26. In this regard, the relevant provisions of the Income Tax Act are sections 3 and 5.

27. Section 3 where relevant and material, provides:

3. Charge of tax

(1) ...

(2) Subject to this Act, income upon which tax is chargeable under this

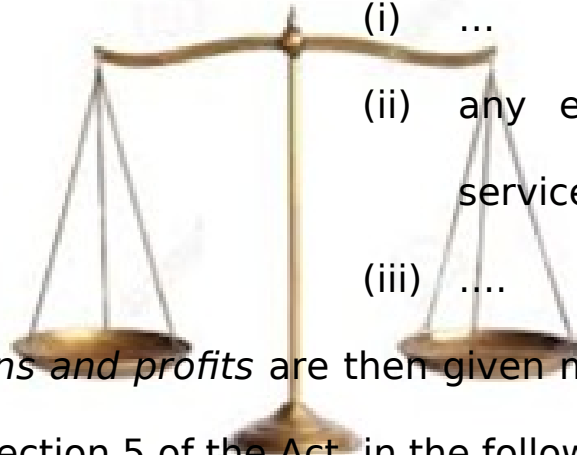
Act shall be in respect of -
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(a) gains or profits from

(i) ...

(ii) any employment or services rendered;

(iii)



28. *Gains and profits* are then given meaning shortly in section 5 of the Act, in the following terms:

5. Income from employment, etc.

(1) **NAIROBI** (a)

(b)

(2) For the purposes of section 3(2)(a)

(ii) "gains or profits" includes -

(a)

(i)

(ii) ...

(iii) ...

(iv) ...

(b)

(c) an amount received as

compensation for the
termination of a contract of
employment or service,

whether or not provision is

made in the contract for the

payment of that compensation:

29. In the circumstances, the law is explicit that compensation awarded in cases of unfair termination of employment is a *gain or profit*.

30. In the Court's view, compensation awarded by the Court under section 49 of the Employment Act, 2007, qualifies as *gains or profits* within the context of section 3(2)(a)(ii) of the Income Tax and is subject to the payment of tax.

Housing levy on compensation for unfair termination of employment

31. Section 4 of the Affordable Housing Levy Act imposes a housing levy.
32. The Section states:

4. Imposition of Levy

(1) There is imposed a levy known as the Affordable Housing Levy.

(2) The Levy shall be at the rate of one point five percent of—

(a) the gross salary of an employee; or

(b) the gross income of a person received or

NAIROBI accrued which is not subject to the Levy under paragraph (a).

(3) The Levy shall be payable to the collector, for remittance into the Fund, not later than the ninth

working day after the end of the month in which the gross salary was due or gross income was received or accrued.

33. That compensation for unfair termination of employment is not a salary, needs no gainsaying.

34. However, the question that begs an answer is whether the compensation is gross income for the purposes of the Act.

35. The Act does not define *gross income*. But in general terms, the compensation would be part of income.

36. An employee typically pays the housing levy with each salary or income. The employer also pays a percentage.

37. Would it therefore be fair labour practice to demand that the employee or employer pays the housing levy after separation?

38. In this Court's view, that would amount to double payment of the housing levy on the part of the

parties and the Court thus returns that compensation for unfair termination of employment is not subject or liable to deduction of the housing levy.

Social Health Insurance

40. The Social Health Insurance Act came into effect around 2023. Section 27(2) of the Act creates a liability to make monthly contributions from salaries or wages of those in employment or from income earned by those not in salaried employment.

41. The section also provides for registration as a contributor.

42. The context of the registration and contributions is that those liable to register and contribute do so either through deductions from salary or wage, or from income earned by non-salaried contributors.

43. The Act has its own mechanisms for registration and contributions. Should section 49(2) of the Employment Act, 2007 serve as another source of enforcing contributions?

44. To this Court, the answer is a no. The employee who is awarded compensation for unfair termination of employment must have been registered through the employer and appropriate deductions made through the payroll during the subsistence of employment and it would be an unfair labour practice to subject such compensation to deductions for social health insurance.

Conclusion and Orders

45. The Court will therefore answer the question posed as follows:

- (i) Compensation and pay in lieu of notice paid as a result of unfair termination of employment under

NAIROBI

section 49(1) of the Employment Act is part and parcel of *gains and profits* within the context of the Income Tax Act as read with section 49(2) of the Employment Act, 2007

and subject to appropriate statutory deductions.

- (ii) It is an unfair labour practice to subject compensation for unfair termination of employment to housing and social health insurance deductions.

46. Arising from the above, the Respondent is ordered to refund to the Claimant within 30 days any deductions made towards the Housing Levy and Social Health Insurance Fund.

47. Each party to bear own costs considering the uncertainty which existed on the application and interpretation of section 49(2) of the Employment Act, 2007.

Delivered virtually, dated and signed in Nakuru on this 25th day of November 2025.

Radido Stephen, MCI Arb
Judge

Appearances

For Claimant

Murage Juma & Co.
Advocates

For Respondent

Andrew & Steve
Advocates

Court Assistant

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