



**Gowi v Outsource Technique Ltd (Cause E222 of 2024)
[2025] KEELRC 3471 (KLR) (4 December 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3471 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E222 OF 2024
ON MAKAU, J
DECEMBER 4, 2025**

BETWEEN

NAFTALI ACHOLA GOWI CLAIMANT

AND

OUTSOURCE TECHNIQUE LTD RESPONDENT

RULING

Introduction

1. This Ruling relates to the Respondent's Notice of Motion dated 10th September, 2025 seeking the following orders:-
 - a. This Application be certified urgent and be heard ex parte in the first instance.
 - b. This Honourable Court be pleased to set aside the ex parte garnishee order nisi issued on 26th August 2025.
 - c. The costs of this Application be provided for.
2. The motion was supported by the Affidavit sworn on 10th September 2025 and 19th September 2025, by the Applicant's Director one Inayat Abass Firdousi and it was opposed by the Claimant vide his Replying Affidavit dated 21st October 2025.

Facts of the case.

3. The Claimants sued the Respondent vide a Statement of Claim dated 18th March 2024 seeking damages for unlawful termination of his employment. By a consent dated 14th July 2025, the parties compromised the suit in the following terms:-



- a. That the Claimant be and is hereby awarded the equivalent of six months' salary compensation, subject to statutory deductions, in full and final settlement of this dispute.
 - b. The Respondent to pay costs of the suit capped at Kes. 90,000/-
 - c. The Respondent to make payment of the above sums within 30 days from the date of adopting this consent as an order of the court.
 - d. In default of any of the above, execution shall issued against the Respondent.
4. The Applicant paid the sum of Kshs. 882,000/- less statutory deduction of Pay As You Earn and Housing Levy, being Kshs. 564,700/-. It further paid the agreed costs of Kshs. 150,000/- and deemed the matter as duly settled. However, the Claimant demanded the money withheld as statutory deductions contending that the issue of statutory deduction was not part of the consent settlement.
 5. When the Applicant refused to honour the said demand, the Claimant applied for and obtained an order of Garnishee Nisi against the Applicant to secure funds in its Account Number 1006854011 at Victoria Commercial Bank. In response the Applicant brought the instant Motion.
 6. The Motion was canvassed by written submissions. Having considered the Motion, the Affidavits, the court record and the submissions filed, the main issue for determination is whether the consent decree was fully settled upon payment of the agreed sum less statutory deductions.

Analysis

7. There is no doubt that the settlement for Kshs. 882,000/- was a gross salary for six (6) months as compensation for unfair termination under section 49(1) (c) of the *Employment Act*. The section provides that where the Labour Officer forms an opinion that termination of contract of employment of an employee was unjustified, the Officer may recommend to the employer to pay the employee any or all of the following:-
 - 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 any other loss consequent upon the 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
 - c) 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.
 - 2) Any payment made by the employer under this section shall be subject to statutory deductions.”
8. I do not need to belabor the point. The above provision is vivid, unambiguous and mandatory. It does not require a court order for the employer to subject any award made under section 49 of the



Employment to statutory deduction. The Claimant cited *Weru v Nderitu* [2023] KEHC 20678 (KLR) where the court held:-

“It is a familiar rule of law that no parol evidence is admissible to contradict, vary or alter the terms of the deed or any written instrument.... one may not use evidence made prior to the written contract to contradict the ultimate contract that has been reduced into writing.”

9. However, parties cannot, in my view, amend an express statutory provision by consent. My considered view is that the consent award entered herein was automatically subject to section 49(2) of the Employment and the Claimant cannot blame anyone for that. The provisions of section 49 applies to this court under section 50.
10. I have perused the payslip dated July 2025 annexed to the Applicant’s supporting affidavits and noted the computation of the net payment of Kshs. 564,700. It clearly shows a deduction of the Housing Levy of Kshs. 13,230 before tax leaving a balance of Kshs. 868,700/-. The balance was then subjected to Pay As You Earn deduction of Kshs. 304,070/- leaving a net of Kshs. 564,700.
11. There is admission that the Applicant paid Kshs. 564,700/- plus costs of Kshs. 150,000 to the Claimant. It follows that the consent decree and costs due to the Claimant herein was fully settled and nothing remains outstanding. Consequently, I allow the Applicant’s Notice of Motion with costs as prayed.

DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 4TH DAY OF DECEMBER, 2025.

ONESMUS MAKAU

JUDGE

Appearance:

Owuocha for the Claimant

Kabugu for the Respondent

