

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT**  
**NAIROBI**  
**CAUSE NO. E385 OF 2023**

**DUNCAN THOITHI MUNYUA .....CLAIMANT/RESPONDENT**

**-VERSUS-**

**SAMORA SIKALIE.....1<sup>ST</sup> RESPONDENT/APPLICANT**

**DON SMITH.....2<sup>ND</sup>**  
**RESPONDENT/APPLICANT**

**ROBERT NJUGUNA.....3<sup>RD</sup> RESPONDENT/APPLICANT**

**RULING**

1. The Respondents/Applicants have approached this Court through a Notice of Motion dated 31<sup>st</sup> July 2025, seeking the following orders:

1) *Spent.*

2) *Spent.*

3) *Spent.*

4) *The Warrants of Attachment and Sale issued on 4<sup>th</sup> July 2025 be declared irregular, unlawful, null and void and be set aside accordingly.*

5) *This Honorable Court be pleased to declare that the decretal sum herein has been fully settled and that the matter stands fully satisfied.*

6) *This Honourable Court be pleased to assess and award damages against the Claimant/Respondent and their advocate for an irregular and illegal execution.*

7) *The costs of this application be borne by the Claimant/Respondent and their Advocate.*

2. The Application is premised on the grounds appearing on its face and is supported by an Affidavit sworn on 31<sup>st</sup> July 2025 by **Samora Sikalie**, the 1<sup>st</sup> Respondent/Applicant, who identifies himself as the Chairperson of the Karen Langata District Association (Association).
3. Grounds in support of the Motion are that by a judgment delivered on 14<sup>th</sup> February 2025, this Court awarded the Claimant Kshs. 1,183,904.00 as unpaid salary for the period 1<sup>st</sup> October 2022 to 2<sup>nd</sup> June 2023 and directed him to attend the Judgment Debtors' offices for clearance and payment of his terminal dues.

4. In compliance with the judgment, the Respondents remitted Kshs. 463,262.00 to the Claimant's advocates, Dennis Onyango & Associates, being the net amount after statutory deductions amounting to Kshs. 333,509.00. That statutory deductions were made pursuant to Section 49 of the Employment Act.
5. Mr. Sikalie asserts that it is the employer's responsibility to deduct and remit statutory dues to the Kenya Revenue Authority and confirms that the taxes were duly remitted.
6. He further states that the Claimant had undisputed outstanding loan arrears of Kshs. 387,132.00 under a loan agreement dated 5<sup>th</sup> August 2021, advanced by the Association and consistently deducted from the Claimant's salary.
7. He avers that the cheque for Kshs. 463,262.00 was accompanied by a letter dated 17<sup>th</sup> March 2025 itemizing the judgment sum and the deductions. The Claimant's advocates acknowledged receipt of the cheque by their letter dated 20<sup>th</sup> March 2025 but nevertheless demanded a further Kshs. 720,642.00 as an alleged outstanding balance and threatened execution, despite the deductions having been fully explained in the letter of 17<sup>th</sup> March 2025.
8. On 30<sup>th</sup> June 2025, the Respondents again received a demand letter from the Claimant threatening to institute fresh legal proceedings.

9. The Claimant proceeded to file an application for execution of the decree, prompting this Honourable Court to issue Warrants of Attachment on 4<sup>th</sup> July 2025 in favour of Nurisha Auctioneers. In that application for execution, the Claimant's advocates purported to award themselves costs and interest which had not been granted in the judgment of 14<sup>th</sup> February 2025.
10. Consequently, on 30<sup>th</sup> July 2025, Nurisha Auctioneers entered the Applicant's premises seeking to attach and sell the Applicant's property pursuant to the said Warrants, thereby necessitating the filing of the present application.
11. In response to the Application, the Claimant filed a Replying Affidavit dated 7<sup>th</sup> August 2025, in which he avers that the Applicant only made a partial payment of the decretal sum amounting to Kshs. 463,262.00, claiming to have deducted statutory dues and a loan repayment.
12. The Claimant contends that the alleged statutory deductions were never pleaded by the Applicant, nor was any evidence tendered at trial to support them, and therefore the deductions amount to disobedience of Court Orders.

13. He further asserts that the e-Return Acknowledgement receipt produced by the Applicant reflects a different return period from the period during which he was employed, and consequently does not relate to him or to his unpaid salary dues.
14. The Claimant denies having any outstanding loan arrears amounting to Kshs. 387,132.00. He argues that the Applicant has neither produced evidence nor provided any computation demonstrating how this figure was arrived at, and that the alleged loan was not pleaded or proved during trial.
15. He further avers that the Applicant did not raise any claim relating to loan deductions in its pleadings, nor did it produce evidence at trial, and is improperly attempting to introduce new evidence after the Court has already determined the issues in the matter.
16. According to the Claimant, the deductions were unwarranted and unlawful, as they are not provided for under the Employment Act and could only have been justified through evidence at trial, which the Applicant failed or neglected to present before this Honourable Court.
17. He avers that the Applicant's current averments introduce an entirely different cause of action from that already adjudicated by this Honourable Court.

18. The Claimant further states that the Applicant is misrepresenting facts, asserting that no additional costs or interest were awarded to him in the Warrants of Attachment. He explains that the additional sum of Kshs. 2,450.00 reflected in the Warrants constitutes further costs and court collection fees assessed by the Court during issuance, which arose solely due to the Applicant's default in settling the decretal sum.

19. The Claimant avers, on the advice of his counsel which he believes to be true, that the decretal sum has not been fully settled and that the Applicant withheld part of the amount without providing any proof of how the deductions were computed, and without any such deductions having been sanctioned by this Honourable Court.

### **Submissions**

20. The Motion was canvassed by way of written submissions. Both parties filed written submissions, which the Court has duly considered.

### **Analysis and Determination**

21. Central to this Application is the enforcement of this Court's orders as set out in the Judgment delivered on 14<sup>th</sup> February 2025. The Applicant maintains that it

has fully satisfied the decretal sum, asserting that the deductions from the Claimant's terminal dues were lawful, being statutory deductions pursuant to Section 49(2) of the Employment Act, and deductions toward a staff loan under the loan agreement dated 5<sup>th</sup> August 2021. Accordingly, the Applicant argues that the Claimant's attempt to execute for an alleged outstanding balance is unlawful, lacks any legal or factual basis, and amounts to double recovery.

22. Opposing the application, the Claimant asserts that the statutory deductions were not claimed by the Applicants in their pleadings. He further disputes owing loan arrears amounting to Kshs. 387,132.00, contending that the Applicants neither pleaded any claim relating to loan deductions nor produced evidence on the same during the trial.

23. Pursuant to Section 49(2) of the Employment Act, any payments made by an employer under that provision for wrongful dismissal or unfair termination are required to be subjected to statutory deductions.

24. It is worth pointing out that the sum awarded by the Court in this case represented the Claimant's unpaid salary for the period 1<sup>st</sup> October 2022 to 2<sup>nd</sup> June 2023. As such, the said amount was ordinarily subject to taxation pursuant to Section 3(2)(a)(ii) read together with Section 5(2)(a) of the Income Tax Act.

25. Further to the foregoing, Section 37(1) of the Income Tax Act places a mandatory duty on an employer to deduct the applicable tax from an employee's emoluments and to account for the same.
26. Consequently, in view of the foregoing provisions, the Applicants were legally obliged to apply statutory deductions from the Claimant's award.
27. In support of the Applicants' assertion that Kshs. 333,509.00 was remitted to the Kenya Revenue Authority in the form of statutory deductions, Mr. Sikalie annexed to his affidavit copies of the documents he considered to be the relevant assessments and payment confirmations of the remittance.
28. The Claimant, however, contends that the e-Return acknowledgment receipt reflects a return period different from his period of employment and, therefore, does not relate to him or to the period of his unpaid salary dues.
29. The Court has reviewed the payment voucher relating to the PAYE arrears paid by the Association to I&M Bank in the sum of Kshs. 321,817.00 and notes that the same is dated 25<sup>th</sup> April 2023, which is prior to the date of the judgment in this case. It is therefore apparent that this payment did not arise from deductions

from the Claimant's terminal dues, which only became payable following the Court's judgment on 14<sup>th</sup> February 2025.

30. It is also notable that the e-Return acknowledgment generated by the Kenya Revenue Authority represents a general tax return filed by the Association for the period from 1<sup>st</sup> July 2025 to 31<sup>st</sup> July 2025.

31. What's more, the amount reflected therein is Kshs. 217,667.00, whereas the Applicants claim to have withheld Kshs. 333,509.00 from the Claimant's terminal dues and remitted it to the Kenya Revenue Authority as taxes due from the Claimant.

32. In view of the foregoing, the Court finds that the documents attached to Mr. Sikalie's affidavit do not support the Applicants' claim that Kshs. 333,509.00 deducted from the Claimant's terminal dues was remitted to the Kenyan Revenue Authority as statutory deductions.

33. The second limb of the Applicants' argument is that they deducted Kshs. 387,132.00 as outstanding loan arrears from a loan previously advanced to the Claimant by the Association. In support of this position, the Applicants attached to Mr. Sikalie's affidavit a copy of a loan agreement ostensibly entered into between the Claimant and the Association. Under the terms of the said

agreement, the Claimant was advanced Kshs. 700,000.00 by way of a loan, which was to be repaid through monthly salary deductions under a check-off system until the loan was fully settled.

34. On his part, the Claimant denies owing any outstanding loan arrears, describing this as a new claim that was neither pleaded nor supported by evidence during the trial.

35. In light of the Claimant's argument, and given that the Notice of Motion was filed after the delivery of the final Judgment, a significant issue that arises is whether the Court can determine this matter at this stage.

36. It is trite that once a Court has delivered its judgment, it ordinarily becomes *functus officio*. In considering the principle of *functus officio*, the Court of Appeal in **Telkom Kenya Ltd v John Ochanda (2014) eKLR** observed as follows:

**“Funtus Officio is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon. The doctrine is not to be understood to bar any engagement by a court with a case that it has already decided or pronounced itself on. What it does bar, is a merit based decisional**

**re-engagement with the case once final judgment has been entered and a decree thereon issued.”**

37. On the same issue, the Supreme Court of Kenya in **Raila Odinga v IEBC & 3 others (Petition No. 5 of 2013)** cited with approval a passage from *“The Origins of the Functus Officio Doctrine with Specific Reference to its Application in Administrative Law”* by Daniel Malan Pretorius, as follows:

**“The functus officio doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality. According to this doctrine, a person who is vested with adjudicative or decision making powers may, as a general rule, exercise those powers only once in relation to the same matter. The (principle) is that once such a decision has been given, it is (subject to any right of appeal to superior body or functionary) final and conclusive. Such a decision cannot be reviewed or varied by the decision maker.”**

38. Guided by the foregoing binding authorities and having considered the opposing positions taken by the parties regarding the loan allegedly advanced by the Association to the Claimant, it is evident that, to conclusively determine

whether the Association was entitled to deduct the alleged outstanding loan from the Claimant's terminal dues, the Court would need to engage in a merit-based consideration of the issue.

39. Essentially, the issue concerning the loan allegedly advanced by the Association to the Claimant constitutes a new dispute that necessitates an evaluation of evidence. This matter was never raised in the initial claim and was not part of the proceedings that yielded the Judgment delivered on 14<sup>th</sup> February 2025.

40. Over and above, the matter was not raised through a counterclaim and set-off. It may very well be said that the issue of the loan allegedly owed by the Claimant constitutes a new claim, introduced at the execution stage, as it was neither pleaded nor brought before the Court for determination during the hearing of the main claim.

41. If indeed the Applicant intended to recover any loan advanced to the Claimant, it would have been prudent to either file a counterclaim within the main proceedings or, alternatively, initiate a separate debt recovery action.

42. As the Court has already pronounced itself on the issues raised in the main claim, it is now *functus officio* with respect to any extraneous matters, such as the issue of the loan advanced to the Claimant.

43. It is also noteworthy that the Applicants have relied on the Court's orders concerning the Claimant's clearance with the Association to justify deducting the loan from his terminal dues. A careful reading of those orders shows that they were specifically directed at the Claimant's handover of the Association's property and documents in his possession. Indeed, this order was pursuant to the Applicants' claim, as set out in paragraph 18 of the Memorandum of Response dated 26<sup>th</sup> June 2023, where the Applicants clearly specified what they required from the Claimant in order for him to be paid his terminal dues. There was no mention of an outstanding loan.

44. It should also be appreciated that a claim concerning outstanding liabilities is a fundamental issue that ought to have been raised in the initial proceedings, given that it involves an element of computation. As it stands, the Court is not in a position to ascertain whether the sum of Kshs 387,132.00 deducted from the Claimant's terminal dues as outstanding loan arrears accurately reflects the amount owed by the Claimant to the Association. In essence, resolving this issue necessitates a merit-based assessment of the relevant facts and evidence contrary to the doctrine of *functus officio*.

45. In view of the foregoing, the Court finds that the deduction of Kshs. 387,123.00 as outstanding loan arrears from the Claimant's terminal dues was inconsistent

with the Judgment delivered on 14<sup>th</sup> February 2025, and, accordingly, the said sum is due to the Claimant.

46. As the Court has found that the documents relied upon by the Applicants do not support the claim that Kshs. 333,509.00 was deducted from the Claimant's terminal dues as statutory deductions, the Applicants are hereby directed to provide the Claimant, within 14 days from the delivery of this Ruling, with evidence confirming that the statutory deductions were duly remitted to the Kenya Revenue Authority.

47. Accordingly, the Court will stay the Warrants of Attachment dated 4<sup>th</sup> July 2025 for a period of 14 days to allow the Applicants settle the balance of the decretal sum amounting to Kshs. 387,123.00 and to provide confirmation of the remittance of Kshs. 333,509.00 to the Kenya Revenue Authority.

48. To bring this matter to a close, there will be no orders as to costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 11<sup>th</sup> day of December 2025**

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**STELLA RUTTO**

**JUDGE**

**In the presence of:**

Mr. Bibiu               for the Claimant/Respondent  
Mr. Ongeri             for the Respondent/Applicant  
Mohammed             Court Assistant

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**STELLA RUTTO**

**JUDGE**