

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAKURU
CAUSE NUMBER 224 OF 2014**

BETWEEN

NERBERT MANDALA OMBAJOCLAIMANT

VERSUS

1. INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS
OF KENYA [ICPAK].....RESPONDENT

AND

2. SANKARA AUCTIONEERSAUCTIONEER

RULING

1. This Claim, filed in 2014 was heard and determined by the Court.
2. The initial trial resulted in dismissal of the Claim.
3. Dismissal was overturned by the Court of Appeal, and the Claim remitted to the Trial Court, for assessment of compensation to the Claimant, the Court of Appeal having found, contrary to the finding of the initial trial, that termination of his contract was unfair and unlawful.
4. The Trial Court assessed compensation at Kshs. 5,398,687.
5. The Respondent applied for an order of stay of execution, intending to go back to the Court of Appeal, on a second Appeal, challenging the assessment of compensation awarded by the Trial Court.

6. In a ruling delivered on 28th February 2025, the Court declined the application by the Respondent for orders of stay of execution.
7. It is on record that the Respondent paid the sum of Kshs. 5,398,867.50 to the Claimant, less PAYE tax.
8. The Respondent also paid costs at Kshs. 340,743.75.
9. The Claimant states that accrued interest, at Kshs. 767, 983. 07 has been paid by the Respondent.
10. The Claimant however, wishes to execute for a sum of Kshs. 323, 617.73. The sum is explained in submissions filed by the Claimant, dated 3rd November 2025, as "*the difference between the amount allegedly remitted to KRA and the correct computation of Kshs. 1,528,206.25.*"
11. The Claimant filed for execution of what he deems to be the balance of his decretal sum.
12. The Respondent moves the Court, through an application dated 26th September 2025, to stay further execution of the decree, and to issue an order of injunction, restraining the Auctioneer, from attaching the Respondent's goods, pursuant to proclamation dated 23rd September 2025.
13. The application is founded on the affidavit of Grace Kamau, Respondent's CEO, sworn on 26th September 2025. Grace restates that

the Respondent paid the entire decretal sum to the Claimant through his Advocates, less PAYE tax.

14. Despite settlement, the Claimant intends to proceed with execution, and the Auctioneer demands fees, without taxing his bill. Proclamation fee is claimed at a staggering Kshs. 800,000 by the Auctioneer.
15. The Respondent submits that the Auctioneer ought to submit his bill to Court for taxation.
16. On the sum of Kshs. 323,617 claimed to be outstanding, the Respondent submits that this dispute arises out of the amount remitted to KRA as PAYE tax, which is within the jurisdiction of KRA. The Court does not interpret or adjudicate on tax liability.
17. The Claimant invokes Section 34 [1] of the Civil Procedure Act, to the effect that all questions arising between the Parties, with regard to the decree, shall be determined by the executing Court, and not by a separate suit. The Court is not being invited to adjudicate or interpret an issue of tax liability; it is being called upon to ensure full satisfaction of its Judgment.
18. The Claimant filed a replying affidavit, sworn on 2nd October 2025.
19. Parties agreed that the application is considered and determined on the strength of their affidavits and submissions. They confirmed filing and exchange of submissions at the last mention, on 4th November 2025.

The Court Finds: -

20. This Claim was filed way back in 2014. It was heard and determined. The Judgment was the subject of an Appeal at the Court of Appeal, which directed that termination of the Claimant's contract by the Respondent was unfair. The Trial Court was directed to assess compensation payable to the Claimant. This was done, with compensation assessed by the Court, at Kshs. 5,398,687.
21. The Respondent sought to go back to the Court of Appeal, and applied for an order of stay of execution. The application was declined.
22. The Claimant applied for execution.
23. The warrant of attachment issued by the Court to the Auctioneer, is dated 23rd September 2025.
24. The decretal amount is indicated to be Kshs. 5,398,687; taxed costs at Kshs. 340,743; and interest at Kshs. 767,983.
25. At paragraph 2 of his submissions dated 3rd November 2025, the Claimant confirms that Kshs. 5,398,687 was paid by the Respondent, upon proclamation.
26. The Claimant acknowledges that costs, at Kshs. 340,743 was paid.

27. At paragraph 4, the Claimant states that the Respondent paid the outstanding interest, at Kshs. 767,983.
28. The decretal amount as captured in the warrant of attachment issued by the Court on 23rd September 2025, has, as far as been communicated to the Court through the submissions of the Parties, been satisfied.
29. The Court has therefore reached the limit of its jurisdiction. It is *functus officio*.
30. If there are other secondary disputes arising from the award made in favour of the Claimant, those disputes should be placed before the relevant dispute settlement platforms, in accordance with the procedural rules, applicable to them.
31. If the Claimant disputes that PAYE tax was deducted by the Respondent, and not remitted to KRA, or disputes the amount deducted from his award, this secondary dispute, is an income tax dispute. He repeatedly describes the amount deducted as "*allegedly*" remitted.
32. In this Court's **Kioko Joseph [suing as representative of the estate of Joseph Kilinda v. Bamburi Cement Limited [2016] KEELRC 825 [KLR]**, the Court found disputed PAYE tax, from an award of the Court, to amount to a tax dispute, primarily within the mandate of the KRA and its Income Tax Appeals Tribunal. Parties were advised to refer their secondary dispute to KRA.

33. The E&LRC decision above, was endorsed by the Court of Appeal, in **Civil Appeal Number 69 of 2016, Kioko Joseph [suing as the legal representative of the estate of Joseph Kilinda] v. Bamburi Cement Limited** where it was stated: -

“In our opinion, the learned Judge correctly directed Parties to involve the KRA, having appreciated that they disagreed on the assessment of PAYE due. KRA is the body charged with the duty of assessing, collecting revenue, and enforcing laws relating to revenue in the country. It is therefore well-suited to assist, and guide in the assessment of the tax dispute.”

34. Whether PAYE tax was deducted and remitted to KRA, and whether it was correctly assessed, is a secondary dispute, which is outside the jurisdiction of the Court.

35. On the Auctioneer’s costs, it is correct that the Auctioneer ought to have his costs assessed in accordance with the Auctioneer Rules [1997]. The demand for Kshs. 800,000 from the Respondent appears excessive, and is disputed. This again is not a dispute that should primarily, be dealt with by this Court. The Auctioneer ought to have his costs taxed, and if the taxation ruling is disputed, Parties would then have the chance to appeal to this Court, under the Auctioneers Rules.

36. The Court is satisfied that it has reached the limit of its jurisdiction, in this Claim which was initiated in 2014. The decretal amount, costs and interest as captured in the warrant of attachment issued by the Court on 23rd September 2025, have been paid.

37. If there are other payments claimed, those are secondary disputes, to be dealt with under the relevant procedural regimes.

IT IS ORDERED: -

- a. *Further execution of the warrant of attachment issued on 23rd September 2025, is stayed.*
- b. *The Auctioneer is restrained from attaching the Respondent's property on the basis of the said warrant.*
- c. *This file shall be marked as closed.*
- d. *Secondary disputes may be placed before the relevant dispute resolution mechanisms, under the applicable procedural laws.*
- e. *No order on the costs of the application.*

Dated, signed, and delivered electronically at Nakuru, this 19th day of December 2025.

James Rika
Judge

