

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAKURU
CAUSE NUMBER 224 O F 2017**

BETWEEN

PETER WANGAI CLAIMANT

VERSUS

EGERTON UNIVERSITY RESPONDENT

RULING

1. This Claim was heard and finalized, but unfortunately the Parties have kept coming back to Court with all manner of applications, on matters revolving around execution of the decree, matters which they would be expected to resolve at their own level.
2. On 14th September 2021, they executed consent on execution of the decree, in the following terms: -
 - a. The University [Respondent] will liquidate the sum of Kshs. 16,772,916.35 to the Claimant at Kshs. 500,000 every end of the month.
 - b. The decretal sum will be settled in full within a span of 33 months, with the commencement being September 2021.

- c. That the said amount will be paid through the personal emoluments over and above his monthly salary, for the period and time the Claimant remains an Employee of the Respondent.
 - d. That following the implementation of this consent the Claimant will not levy interest on the outstanding amount.
 - e. That the Claimant's costs will be agreed upon by the Parties and payment thereof will be implemented upon full implementation of the decretal amount.
3. The Claimant has applied to execute decree, stating that the Respondent has not complied in full, with the terms of the consent. He submits that the Respondent withheld PAYE tax from the sum of Kshs. 16,772, 916.35. He further submits that the Respondent has not paid to him the sum of Kshs. 8,131,637.70 being compound salaries from the time of the Judgment, on 24th January 2019.
4. He claims he is owed by the Respondent, a total of Kshs. 13,163,512.
5. He submits that decretal sums are never taxed. This position is expressed in his submissions, and affidavit sworn on 4th August 2025.
6. The Claimant states that the consent is a valid contract between the Parties, and cannot be varied. Pursuant to the terms of the consent, he submits that he is owed Kshs. 12,879,304 by the Respondent, which

should continue to attract interest at the rate of 14% p.a., in terms of the consent on record [the sum owed is alternatively claimed at Kshs. 13,163, 512].

7. The Respondent filed an application, which is the subject matter of this ruling, dated 11th July 2025. The orders sought include: the Court declares that the Respondent has fully satisfied its obligations to the Claimant, arising out of all claims in the present suit; and, the Court stays further execution of the decree by the Claimant.
8. The crux of the application is that the Respondent has satisfied the terms of the consent. It subjected the decretal amount to PAYE tax, following the principles in the Court of Appeal decision, **Joseph v. Bamburi Cement Limited [2016] e-KLR**.
9. The Respondent exhibits a summary of the Claimant's consolidated salary, for the period September 2021 to March 2025, indicating that the Claimant was paid a total of Kshs. 16, 772, 916.25.
10. Parties agreed that the application is considered and determined on the strength of the record. They confirmed filing and exchange of submissions at the last mention, on 24th October 2025.

The Court Finds: -

11. In a related Cause Number 11 of 2020, involving the Parties herein and others, the Court stated in order [b] of its ruling dated 10th May 2025,

that the Claimant herein may proceed to execute on his balance, if the Respondent fails to honour the terms of the consent dated 14th September 2021.

12. The consent required the Respondent to pay an additional amount of Kshs. 500,000 to the Claimant's monthly salary, for 33 months, which would end in June 2024.
13. A document identified as consolidated pay summary, exhibited in the Respondent's application as 'JB3,' indicates that as of March 2025, about 41 months after the consent order, the Respondent had paid to the Claimant Kshs. 16,772,916.25.
14. The Claimant does not dispute the correctness of the consolidated pay summary. He only disputes that the amount paid was subjected to PAYE tax, submitting that decretal sums are not subject to PAYE tax.
15. His submissions is not supported by legislation and judicial authorities.
16. Section 49[2] of the Employment Act, makes every award of the Court, whether adjudicated or consensual, subject to statutory deductions.
17. This was emphasized by the Court of Appeal in the decision cited by the Respondent, **Kioko Joseph [suing as the Legal Representative of the estate of Joseph Kilinda] v. Bamburi Cement Limited [2017] e-KLR**, and other judicial authorities such as **Hosea Njeru Kagondu v. Kenya Union of Commercial, Food & Allied Workers [2012] e-KLR; DPL Festive v.**

Elijah Ochieng' Rakuru [2022] e-KLR; and Galgalo Jarso Jillo v. Agricultural Finance Corporation [2022] e-KLR.

18. In the leading decision, **Kilinda v. Bamburi Cement Limited** [above], the Court of Appeal explained that the Employer has an obligation to recover the appropriate tax, from any award payable to an Employee. The obligation extends to all awards, whether voluntary or obligatory. The Court invoked Sections 19[1][f] and 49[2] of the Employment Act, as well as Sections 3[1], 3[2][a], 5 [2], and 37 [1] of the Income Tax Act. The Court also underlined this obligation, relying on Employers' Guide to PAYE, a publication of the KRA.
19. The Court of Appeal also addressed the effect of a consent order /decree on PAYE obligation, explaining in **Andrew Mukite Saisi v. Tracker Group of Companies [2020] e-KLR**, that:

“ It therefore follows that even through Judgment entered between the Parties, did not make provision, in express terms, for payment of tax, any amount that was paid to the Appellant [Employee], was therefore subject to taxation. The Appellant's complaint that this would amount to variation of the consent Judgment, is therefore baseless, and this ground fails.”

20. The Claimant herein raises similar objection to taxation, as did Saisi, in the Appeal above. He submits that PAYE was not part of the terms of the consent, and that consent was an invariable contract, between the Parties. Deduction of PAYE tax, in his view, was in breach of the contract.

21. This position is legally unsound, going by the principles laid down in the above legislation and judicial authorities.
22. There are reasons however, to doubt the Respondent's prayer, that the Court orders that, it has satisfied the terms of the consent order in full, and directs closure of the matter.
23. The consent order was that the sum of Kshs. 16,772,916 is liquidated within 33 months, starting September 2021.
24. Payment was expected to be complete within 33 months, by June 2024.
25. In breach of the consent order, the Respondent unilaterally extended the period of payment to March 2025, a period of about 42 months. No leave was sought from the Court, or further consent reached, on extension of the payment period.
26. This unilateral extension, warrants levy of interest on the principal amount, at 14% p.a. for the period June 2024 to March 2025 [9 months].
27. The consent order states that costs would be agreed upon by the Parties, and payment made, upon full payment of the decretal amount.
28. In the absence of an agreement on costs, in June 2024 or March 2025, the Court directs that costs be taxed in favour of the Claimant by the Deputy Registrar.

29. No order on the costs of the application.

IN SUM, IT IS ORDERED: -

- a. *It is declared that PAYE tax was validly deducted from the sum payable to the Claimant by the Respondent, in terms of the consent order.*
- b. *In full satisfaction of the consent order, the Respondent shall pay to the Claimant, interest on the principal amount, for a period of 9 months, at Kshs. 176,115.*
- c. *The Respondent shall pay costs of the Claim to the Claimant, as shall be taxed by the Taxing Master.*
- d. *The file shall be mentioned after payment of the above interest and taxed costs, for closure.*

Dated, signed and delivered electronically, pursuant to Rule 68[5] of the E&LRC

[Procedure] Rules, 2024, this 19th day of December 2025.

James Rika
Judge

