

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT
MOMBASA

CAUSE NO. E123 OF 2023

WILFRED SCHULTE BERND CLAIMANT

VERSUS

THE BAHARI DHOW LIMITED 1ST RESPONDENT

LEO INVESTMENT LIMITED T/A

THE CLOUD HOTEL AND SUITES 2ND RESPONDENT

RULING

The respondents, The Bahari Dhow Limited and Leo Investment Limited t/a The Cloud Hotel and Suites, filed an application dated 30 October 2025 under the provisions of Order 51, rules 1 and 10, of the Civil Procedure Rules, and Sections 1A, 1B & 3A of the Civil Procedure Act. The respondents seek orders setting aside the Warrants of Execution issued to Swiftway Auctioneers on 2 October 2025 and, instead, directing the court to issue appropriate orders in this matter.

The application is supported by the affidavit of Doreen Muchiri, legal officer, who avers that on 13 June 2024, the court entered judgment in favour of the claimant against the respondents for the sum of KSh. 674,934. In settlement, on 18 July 2024, the respondent forwarded a cheque No. 004621 for the sum of Ksh. 464,189 to the claimant.

The payment of Ksh. 464,189 was in excess of the decretal sum due of Ksh. 447,934, and hence the respondents are entitled to a refund of Ksh. 16,255, which has already been paid to the claimant.

Before commencing execution, the decree, issued on 13 June 2024 and more than a year old, the claimant failed to serve a Notice to Show Cause as required by law, rendering the execution process irregular and unlawful. The claimant was unable to disclose to the court that the decretal sum of Ksh. 464,189 had long been paid, hence obtained the Warrants of Attachment irregularly. The claimant misled the court by failing to disclose that the respondent had paid the decretal sum. By making material non-disclosure, the claimant led to the issuance of unlawful warrants of attachment.

The respondents' goods were proclaimed on 29 October 2025 by Swiftway Auctioneers, and hence the need for court intervention to discharge the Warrants for Attachment.

While processing the Warrants of Attachment, the claimant applied for execution through an unsigned application for Ksh. 497,934 through dishonest non-disclosure that the decretal sum had been fully paid. The court, by error, processed the Warrants of Attachment for Ksh. 227,000 in respect of a laptop, to be subtracted from the decretal sum. He, however, failed to disclose the paid amount.

Unless the orders sought are issued, the respondents shall suffer loss and damage.

In reply, the claimant filed his Replying Affidavit and avers that, pursuant to the decree issued on 13 June 2024, the court awarded him Ksh. 674,934. The respondents paid only Ksh. 464,289 as part payment thereof.

By letter dated 29 July 2024, the claimant notified the respondents of the amount paid and demanded payment of the balance of Ksh. 220,745. However, the respondents alleged that the balance related to statutory deduction is erroneous and not part of the judgment herein.

The claimant avers that the decree herein was for Ksh. 674,934 without any deductions. The respondents have not paid the alleged decreed sum in full. They owe a balance of Ksh.210,745. The orders sought are without merit, the respondents have not demonstrated sufficient cause for the lifting of the Warrants of Attachment, and the same should be dismissed with costs.

The respondents filed a Further Affidavit of Doreen Muchiri, who avers that the court indeed issued a decree for Ksh. 674,934 on 13 June 2024, and there is a payment of Ksh. 464,289 upon a deduction of Ksh. 210,745 in statutory deductions. The demand for full payment of the decretal sum fails to account for the statutory deductions, a legal requirement imposed by the Kenya Revenue Authority (KRA) on the employer.

Determination

The main contention is the payment of the decretal sum.

It is common cause that the judgment sum herein is Ksh. 674,934.

The respondents have since paid Ksh. 464,189 to the claimant.

The claimant asserts that the paid sum is less than Ksh. 210,745, and the judgment did not factor in any payments of statutory deductions.

Under section 49(2) of the Employment Act (the Act), all payments to an employee are subject to deduction of statutory dues, whether this is stated in the judgment or not, as held in **Alexander John Frank Stubbs v Fourth Generation Capital Limited, Cause No. E272 of 2023**. Hence, under section 49(2) of the Act, the employer is under a legal duty to deduct and remit all statutory dues to the relevant statutory body/bodies.

(2) Any payments made by the employer under this section shall be subject to statutory deductions.

Any payments made by the employer to an employee, including an award of compensation, payment of terminal dues, and other work benefits. Such are subject to statutory employer deductions.

The judgment sum herein was ksh.674,934,
Less Ksh. 227,000 for the laptop,

Total due Ksh. 447,934.

The total sum of Ksh. 447,934 subject to statutory deductions.

The claimant has since been paid Ksh.464,934.

This is an overpayment of Ksh.16,255.

The claim and demand for Ksh. 210,745 is unlawful and irregular.

The Warrants of Attachment issued to M/s Anthony Michael Mulwa t/a Swiftway Auctioneers at the instance of the claimant for the sum of Ksh. 449,434 is irregular and based on an invalid tabulation of the dues owing to the claimant. He cannot demand payment of monies that include statutory deductions. This belongs to the statutory body.

Proclaiming the goods of the respondents against an irregular assessment of the monies due is invalid.

Application dated 30 October 2025 is with merit and is hereby allowed. The Warrant for Attachment dated 27 October 2025 is set aside. The claimant shall refund to the respondent Ksh. 16,255 and further meet the costs of this application. The claimant shall pay the auctioneers' costs.

Delivered in open court at Mombasa, this 22nd day of January 2026.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant:

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