



REPUBLIC OF KENYA



KENYA LAW
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**Njuguna v Sybrin Kenya (Cause E706 of 2020)
[2026] KEELRC 92 (KLR) (23 January 2026) (Ruling)**

Neutral citation: [2026] KEELRC 92 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E706 OF 2020
JW KELI, J
JANUARY 23, 2026**

BETWEEN

SOLOMON GICHUNG'WA NJUGUNA APPLICANT

AND

SYBRIN KENYA RESPONDENT

RULING

1. The judgment holder is dissatisfied with the deductions on his judgment award under section 49(2) of the *Employment Act*, which requires that any payments made by the employer under the section shall be subject to statutory deductions, filed the dispute on deductible tax for determination before this court vide an application dated 23/09/2025. The applicant sought for the following orders-
 - a. That the Honorable Court do determine on the amount of statutory deductions/PAYE to be applied on the decretal amount in respect to a consent entered into between parties dated 22nd April 2024.
2. The application was supported by Affidavit sworn by Solomon Gichung'wa. The Respondent on their part filed a Replying Affidavit dated 13th October 2025 sworn by Victor Moranga whereby the Applicant filed a Further Affidavit dated 4th November 2025.
3. The application was canvassed by way of written submissions. Both parties filed.
4. Issues for determination
 - a. Whether the Employment and Labour Relations Court has jurisdiction to assess tax deductions on a decretal amount.
 - b. In the event of finding that the court has jurisdiction, what if the deductible statutory deductions?



Whether the Employment and Labour Relations Court has jurisdiction to assess tax deductions on a decretal amount.

5. On the 16th February 2024 the court (Justice Ocharo Kebira) entered judgment for the applicant as follows-
 - I. A declaration that the Claimant remained as an employee of the Respondent throughout the period he was under suspension, and up to the date of filing this suit.
 - II. Salary arrears for 8 years and six months (104 months) Kshs. 26,000,000.
 - III. Salary arrears for the period 1st January 2020 to 30th October 2020, Kshs. 2,500,000.
 - IV. Compensation for constructive dismissal under the provisions of section 49 (1) (c) of the [Employment Act](#), Kshs. 2,000,000.
 - V. The Respondent to issue a certificate of service to the Claimant within 30 days of this judgment.
 - VI. Interest on the sums awarded at court rates from the date of judgment till full payment.
 - VII. Costs of this suit.
6. The Respondent, in compliance with payments of the decretal sum, tabulated the deductible tax, which the judgment holder was not agreeable with. In response to the application, the respondent raised the issue of the jurisdiction of the court to assess payable tax. The respondent contended the court has no jurisdiction to assess payable deductions and PAYE under the decretal sum. Section 49(2) of the [Employment Act](#) provides –‘Any payments made by the employer under this section shall be subject to statutory deductions’.
7. The parties were in agreement that section 49(2) of the [Employment Act](#) was applicable in the computation of the payable net amount, but a dispute arose as to the formula for the statutory deductions. I have considered the position of the parties.
8. Does the court have jurisdiction to determine deductible tax ? The applicant was of the position that the court has jurisdiction and relied on section 86 (2) of the [Employment Act](#) to wit-‘86 (1)Subject to the provisions of this Act whenever—(a)an employer or employee neglects or refuses to fulfill a contract of service; or(b)any question, difference or dispute arises as to the rights or liabilities of either party; or(c)touching any misconduct, neglect or ill treatment of either party or any injury to the person or property of either party, under any contract of service, the aggrieved party may complain to the labour officer or lodge a complaint or suit in the Employment and Labour Relations Court.(2)No court other than the Employment and Labour Relations Court shall determine any complaint or suit referred to in subsection.’ Conversely, the respondent contended that the court had no jurisdiction to determine payable statutory deductions /PAYE against the decretal sum awarded to the applicant in judgment delivered on the 16th February 2024. The respondent submitted that the task of determining payable tax lies with the tax authority, namely, the Kenya Revenue Authority. That the issue captured in the application is not an employment dispute but tax issue for the tax authority and any subsequent litigation would be before the High Court Commercial and Tax Division.
9. To buttress this position the respondent relied on decision in *Kioko Joseph (suing as a representative of the Estate of Joseph Kilinda) v Bamburi Cement Limited*(2016)KEELRC 825(KLR) where justice Rika held –‘The trial Court retains jurisdiction, save that it is limited by the law in determining the aspect relating to assessment of income tax’ The court in paragraph 22 held-‘22. The Court suggested



in the case of Andrew Mukiti Saisi that Employers must discharge their obligation under the *Income Tax Act*, to deduct PAYE from recurrent wages and terminal wages. The obligation applies in the case of a current Employee, and an Employee on termination. It is not correct to argue that the Claimant had been dismissed, and therefore not subject to the laws governing payment of employment income tax. If either Party has a complaint on their tax obligation or tax assessment, such Party is guided by the law to lodge a complaint with the Commissioner of Domestic Taxes under Section 84 of the Income Tax. If one is dissatisfied with the decision of the Commissioner, recourse lies in the dispute resolution mechanism created under the *Tax Appeals Tribunal Act* No. 40 of 2015.” The above decision by Justice Rika was upheld by the Court of Appeal in *Kioko Joseph (Suing as the legal representative of the Estate of Joseph Kilinda) v Bamburi Cement Ltd* [2017] KECA 360 (KLR) where it elaborated the applicable law as follows- “Furthermore, Section 37 (1) of the *Income Tax Act* requires an employer paying emoluments to an employee to deduct therefrom, and account for income tax thereon, to such extent and in such manner as may be prescribed. Such tax is delineated under Section 3 (1) of the Income tax in the following manner: -

“ 3.

- 1) Subject to, and in accordance with this Act, a tax to be known as income tax shall be charged for each year of income upon all the income of a person, whether resident or non-resident, which accrued in or was derived from Kenya.
- 2) Subject to this Act, income upon which tax is chargeable under this Act is income in respect of –
 - a) gains or profits from-
 - i
 - ii

Section 5 (2) of the *Income Tax Act* elaborates gains and profits as-

“For the purposes of section 3(2)(a) (ii), “the gains or profits” includes- wages, salary, leave pay, sick pay, payment in lieu of leave, fees, commission, bonus, gratuity, or subsistence, travelling, entertainment or other allowance received in respect of employment or services rendered, and any amount so received in respect of employment or services rendered in a year of income other than the year of income in which it is received shall be deemed to be income in respect of that other year of income.”

It is also instructive to note that the KRA’s Employers Guide on P.A.Y.E prescribes that,

“procedure On Lump Sum Payments (Gratuities, Bonuses etc)

A. Notification



Employers are no longer required to notify the Tax Department before making payments of terminal benefits to the employees upon leaving their employment. Every employer has an obligation under Section 37 of the Income Tax Act to recover appropriate tax from any lump sum amount before releasing the difference/balance to the employee.

1.
2. Compensation for termination of employment Liability extends to any payment, whether voluntary or obligatory made to a person to compensate him for the termination of his contract of employment or services, whether the contract is written or verbal and whether or not there is provision in the contract for such payment.” Emphasis added.

It follows therefore from the foregoing that contrary to the appellant’s position, the entire global award was subject to taxation. Consequently, the learned Judge did not err in holding as much. This position was restated by this Court in *Directline Assurance Co. Ltd vs. Jeremiah Wachira Ichaura* [2016] eKLR thus:-

“It is trite law that any lumpsum payment for say, terminal dues, is subject to statutory deductions for the years taken into account. Indeed in *Simon Deakin and Gllian S. Morris*, *Labour Law* at page 405, the writers observe that it is the net salary, salary after deduction of income tax, National Insurance contribution and contributions to pension schemes or similar benefits, that is used to compute any damages due to any employees. Accordingly the court erred in not subjecting the award to the mandatory statutory deduction.

In our opinion, the learned Judge correctly directed parties to involve the KRA having appreciated that they disagreed on the assessment of P.A.Y.E 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 payable.”

10. I upheld the above decision of the Court as upheld by the Court of Appeal in *Kioko Joseph (Suing as the legal representative of the Estate of Joseph Kilinda) v Bamburi Cement Ltd* [2017] KECA 360 (KLR) to find that the court has no jurisdiction to determine a dispute on the assessment of payable tax on its award. The jurisdiction of the court is as outlined in section 12 of the Employment and Labour Relations Act as follows:-”The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including —
 - (a) disputes relating to or arising out of employment between an employer and an employee;
 - (b) disputes between an employer and a trade union
 - ;(c) disputes between an employers' organisation and a trade unions organisation;
 - (d) disputes between trade unions;
 - (e) disputes between employer organizations;
 - (f) disputes between an employers' organisation and a trade union;(g)disputes between a trade union and a member thereof;
 - (h) disputes between an employer's organisation or a federation and a member thereof;
 - (i) disputes concerning the registration and election of trade union officials; and



- (j) disputes relating to the registration and enforcement of collective agreements.”
11. The instant dispute is purely on deductible tax and not related to issues outlined in section 86 of the *employment act* as relied on by the applicant to wit-‘86) (1)Subject to the provisions of this Act whenever—
- (a) an employer or employee neglects or refuses to fulfill a contract of service; or
 - (b) any question, difference or dispute arises as to the rights or liabilities of either party; or
 - (c) touching any misconduct, neglect or ill treatment of either party or any injury to the person or property of either party, under any contract of service, the aggrieved party may complain to the labour officer or lodge a complaint or suit in the Employment and Labour Relations Court” The court became functus on issuance of judgment and decree in determination of the disputes envisaged under section 86 of the *Employment Act*. The instant dispute is about the deduction of statutory deduction and PAYE in specific. The court discerned the dispute to lie in the interpretation of the Income Tax and how the Pay as You Earn tax was to be deducted. The court has no jurisdiction over the dispute, applying section 12 of the Employment and *Labour Relations Act*. In the upshot, the court upholds the decision of the Court of Appeal in Kioko Joseph (Suing as the legal representative of the Estate of Joseph Kilinda) v Bamburi Cement Ltd [2017] KECA 360 (KLR). The court must then put down its tools. It cannot proceed to the next issue which lies for determination by the tax authority.
12. The applicant is guided to refer the dispute on the applicable tax deduction to the Kenya Revenue Authority. Indeed, I have in the past directed parties to have the tax authority assess the deductible tax on awards. The application is dismissed. To temper justice with mercy I make no order as to costs in the application.
13. It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 23RD DAY OF JANUARY, 2026.

J.W. KELI,

JUDGE.

In The Presence Of:

Court Assistant: Otieno

Applicant – Muriuki h/b Kimeru

Respondent – Wangare Mwaura and Cecilia

