



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS**

**COURT OF KENYA AT KISUMU**

**APPEAL NO. E080 OF 2024**

KENYA INSTITUTE OF MANAGEMENT.....**APPELLANT**

**VERSUS**

MOSES

RAPHAEL

OGOLA.....

.....**RESPONDENT/APPLICANT**

**RULING**

1. The Respondent/Applicant (hereinafter referred to as “the Applicant”) moved this Court by a Notice of Motion under Certificate of Urgency dated 10<sup>th</sup> December 2025, seeking the following orders:

(a) *Spent*

(b) *Spent*

- (c) That the security deposit of Kshs. 1,200,000/- held in Family Bank account No. 068000037018 in the joint names of both counsel on record be released to the firm of **Onyango Jonyo & Co. Advocates** for onward transmission to the Applicant;
- (d) The security deposit be deposited into the Applicant's advocate's account number 0930261001 held at Diamond Trust Bank for onward transmission to the Applicant;
- (e) That there be no order as to costs.

2. The application is supported by the grounds set out on its face as well as the Applicant's supporting affidavit. He contends that the decretal amount was deposited in a joint interest-earning account in the names of both counsel as a precondition for stay of execution pending appeal, and that the appeal has since been determined in his favour. He further asserts that he is currently unemployed and has patiently awaited the fruits of his judgment, contending that any proposal for payment in instalments would be inappropriate. It is his position that the Respondent would suffer no prejudice if the application is allowed.

3. In response, the Respondent/Appellant filed a replying affidavit sworn by Raymond Mwangi, its Head of Shared Services. He contended that the Appellant was not opposed to the sums being released to the Respondent save for tax deductions under section 35 of the Income Tax Act.
4. In rejoinder the Applicant filed a further affidavit sworn on 15<sup>th</sup> December 2025. He contended that no reasons had been advanced to justify the continued withholding of the deposited sum, nor had any compelling basis been laid for payment by instalments. He further asserted that no evidence had been tendered to demonstrate that the Respondent would be unable to continue operating should the funds be released. The Applicant maintained that the Respondent was intent on denying him the fruits of his judgment, reiterating the settled principle that litigation must come to an end. At the hearing of the application, the Applicant made oral submissions, while the Respondent elected to rely entirely on its replying affidavit.

#### Applicant's Submissions

5. The Applicant submitted that the decretal amount awarded by the Court was not subject to taxation, placing reliance on **Ibrahim Manyara v Registered Trustees Of Agricultural Society Of Kenya (ASK) [2014] KEELRC 637 (KLR)**. He further invoked section 42 of the Employment Act, arguing that statutory deductions were restricted to awards made by Labour Officers. It was also his contention that court awards did not constitute income within the meaning of section 3(2)(a)(ii) of the Income Tax Act.
6. In further support of his position, the Applicant submitted that section 49(1) of the Employment Act contemplated full payment of damages following a finding of unfair termination. He urged the Court to be guided by **Stubbs v Fourth Generation Capital Ltd [2025] KEELRC 3305 (KLR)**, for the proposition that statutory deductions were only applicable where an employee was in active employment and not after an award had been made by the Court.

#### Disposition

7. The motion is for release of funds. The Respondent is not opposed to the release save for the matter of income tax which it asserts is payable in terms of section 35 of the Income Tax Act, a position the Respondent/Applicant vehemently opposes. There is also a request to pay the sum in instalment, a request the Respondent also opposes asserting the funds are in a deposit account and therefore are capable of payment all at once.
8. The award of the Court as held in the case of **Stubbs v Fourt Generation Capital Ltd** (*supra*) are not income for purposes of the Income Tax Act and therefore are not amenable to deduction of income tax. The Court returns that the sum of Kshs. 1,200,000/- held in Family Bank account No. 068000037018 in the joint names of both Counsel on record in this case be released to the firm of **Onyango Jonyo & Co. Advocates** for onward transmission to the Applicant by way of a transfer to account number 0930261001 in the name of Onyango Jonyo & Co. Advocates held at Diamond Trust Bank for onward transmission to the Applicant.

9. There is no order as to costs for the application made herein.

It is so ordered.

**Dated and delivered at Kisumu this 16<sup>th</sup> day of February**

**2026**

**Nzioki wa Makau, MCI Arb.  
JUDGE**

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