



**Okiro v Multimedia University of Kenya (Cause E606 of 2023)  
[2025] KEELRC 229 (KLR) (31 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 229 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E606 OF 2023  
SC RUTTO, J  
JANUARY 31, 2025**

**BETWEEN**

**ABRAHAM OBWOCHA OKIRO ..... CLAIMANT**

**AND**

**MULTIMEDIA UNIVERSITY OF KENYA ..... RESPONDENT**

**RULING**

1. The Respondent/Applicant has moved this Court vide a Notice of Motion Application dated 26<sup>th</sup> November 2024, seeking the following orders:
  1. Spent.
  2. Spent.
  3. Spent.
  4. That the Honourable Court do issue an order to stay the Proclamation Notice and Warrants of Attachment dated 20<sup>th</sup> November 2024 after the hearing and determination of this application.
  5. That the Respondent/Applicant be termed to have settled the decretal sum in this matter.
  6. That the costs of this Application be provided for.
2. The Application is premised on the grounds set out on its face and is supported by the Affidavit sworn on 26<sup>th</sup> November 2024 by Wilson Kagwe, the Applicant's Legal Officer.
3. Mr. Kagwe deposes that the Claimant/Respondent herein was a lecturer at the Applicant University and his pay was subject to Pay As You Earn (PAYE) as provided by the law.



4. It is Mr. Kagwe's assertion that the Applicant has settled the entire Decretal sum as follows: a gross of Kshs. 384,000/= whereof the net of Kshs. 268,800/= was paid to the Claimant vide a cheque dated 3<sup>rd</sup> April 2024; and a gross of Kshs. 1,424,000/= whereof the net of Kshs. 1,090,700/= was paid to the Claimant vide two cheques dated the same date of 5<sup>th</sup> August 2024.
5. That the Applicant has paid a total amount of Kshs. 1,808,000/= to the Claimant.
6. Mr. Kagwe avers that the Claimant has subsequently served the Applicant with a Proclamation Notice and Warrants of Attachment dated 20<sup>th</sup> November 2024 giving the Applicant seven (7) days to recover a further amount of Kshs. 218,000/=.
7. According to Mr. Kagwe, the Applicant has been over paid and his act and/or commission are only intended to unjustly enrich himself.
8. It is his assertion that the Claimant has not denied the fact that his PAYE was paid by the Applicant in settlement of the Decretal sum.
9. Mr. Kagwe maintains that the Claimant having been an employee of the Applicant is conversant and knows that his payment for his services is subject to statutory deductions as provided by the law.
10. That unless the orders sought in the application are granted, the Claimant threatens to enforce the Warrants of attachment and has already instructed M/s. Mbusera Auctioneers who have served the Applicant with the Proclaimed Notice.
11. Mr. Kagwe further deposes that if the orders sought in this Application are not granted, the Claimant stands to unjustly enrich himself to the detriment of the Applicant.
12. In response to the Application, Abraham Obwocha Okiro, the Claimant herein, filed a Replying Affidavit dated 30<sup>th</sup> November 2024 in which he avers that he is not a full time employee of the Applicant, but rather offers his services on very express and clear contractual terms as regards the agreed net pay where no mention of the alleged deductions are mentioned on the letters of appointment that form part of the evidence.
13. Mr. Obwocha further terms the Applicant's assertions that it has overpaid him, superfluous, since the exaggerated payments that have been applied in computing the sum of Kshs. 1,808,000/= as part of those payments were never in dispute as part of his claim.
14. He further deposes that the Applicant cannot whimsically and unilaterally seek to amend the decree of this Honourable by choosing to settle the same as it deems fit without having tendered any evidence before this Court that his pay was subject to any PAYE deductions as it now seeks to do.
15. It is Mr. Obwocha's view that the Applicant's contention that the decretal sum was subject to statutory deductions of PAYE is misleading and only intended to hoodwink this Honourable Court in availing a remedy that is not available to the Applicant. It is his contention that the said document does not show the actual deductions attributed to his pay.

### **Submissions**

16. The Application was canvassed by way of written submissions. Both parties complied and I have given due consideration to their respective submissions.



## Analysis and Determination

17. The gist of the Application by the Applicant is that it has since paid the entire decretal amount to the Claimant totaling the sum of Kshs 1,808,000/= yet the Claimant wants a further Kshs 218,181/= more than what was decreed by the court. According to the Applicant, the Claimant's pay was subject to PAYE as provided by the law. That further, the Claimant has not denied the fact that his PAYE was paid by the Applicant in settlement of the decretal amount.
18. The Claimant has refuted the Applicant's assertions and contends that the Applicant cannot whimsically and unilaterally seek to amend the decree of this Honourable Court by choosing to settle the same as it deems fit without tendering evidence that his pay was subject to PAYE deductions. The Claimant has further contended that he was not a full-time employee of the Applicant and that he offered his services on express and clear contractual terms as regards the agreed net pay and there was no mention of the alleged deductions.
19. In its Judgment which was delivered on 23<sup>rd</sup> February 2024, the Claimant was awarded the sum of Kshs 1,424,000/= being unpaid salary in 2021 and 2022. The Claimant was further awarded interest at court rates from the date of filing the suit until payment in full.
20. From the record, the party and party costs were taxed at Kshs 46,250/= while interest computed for 228 days amounted to Kshs 13,571/=. Therefore, this brings the total amount due to the Claimant to Kshs 1,483,821/=.
21. In support of the Application, the Applicant annexed to the Affidavit of Wilson Kagwe, copies of three cheques issued to the Claimant which shows that cumulatively, the Claimant was paid a sum of Kshs 1,359,509/=.
22. The Respondent further annexed a copy of the PAYE remittance advice in favour of the Claimant to the Kenya Revenue Authority bearing the sum of Kshs 427,000/=.
23. From the record, the Claimant commenced execution proceedings for the recovery of the sum of Kshs 218,181/= which he claims to be the balance of the amount due to him from the Applicant.
24. In light of the foregoing, the question that must be answered is whether the Applicant has duly settled the decretal amount herein and whether it acted within the law in subjecting the Claimant's award to statutory deductions namely PAYE.
25. As can be discerned from the Judgment delivered on 23<sup>rd</sup> February, 2024 the Claimant's award constituted unpaid salaries with respect to 2021 and 2022.
26. Section 19 (1) (f) of the *Employment Act* provides as follows:  
(19)
  - (1) Notwithstanding section 17(1), an employer may deduct from the wages of his employee—  
.....
    - (f) any amount the deduction of which is authorised by any written law for the time being in force, collective agreement, wage determination, court order or arbitration award
27. The aforementioned statutory provision is in consonance with the provisions of Section 37(1) of the *Income Tax Act* which provides as follows;



(37)

- (1) An employer paying emoluments to an employee shall deduct therefrom, and account for tax thereon, to such extent and in such manner as may be prescribed.
28. Notably, Section 37(2) of the *Income Tax Act*, provides for a penalty against an employer in the event of non-compliance with the provisions of (1).
29. As such, it follows that PAYE is a statutory deduction allowed under Section 19 (1) (f) of the *Employment Act* hence the Applicant was under a legal obligation to effect PAYE deductions from the Claimant's award as it constituted his emoluments.
30. On this issue, the Court agrees with the sentiments expressed by the learned Judge in the case of Kioko Joseph [suing as the representative of the estate of Joseph Kilinda] v Bamburi Cement Limited [2016] KEELRC 825 (KLR) that statutory obligations, which include income tax, need not be declared by Courts, more so when they are not issues in dispute, and are expressly provided for under the law.
31. To this end, the Application dated 26<sup>th</sup> November 2024 is found to be meritorious and consequently, the Proclamation Notice and Warrants of Attachment dated 20<sup>th</sup> November 2024 issued by Mbusera Auctioneers are hereby lifted and set aside.
32. There will be no orders as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31<sup>ST</sup> DAY OF JANUARY 2025**

**STELLA RUTTO**

**JUDGE**

In the presence of:

Mr. Matwere for the Claimant/ Respondent

Mr. Moturi for the Respondent/Applicant

Millicent Court Assistant

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

