



**Kamau v Rai Plywoods (Kenya) Ltd (Cause E008 of 2023)
[2025] KEELRC 424 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 424 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E008 OF 2023
MA ONYANGO, J
FEBRUARY 13, 2025**

BETWEEN

PAUL MUHUHA KAMAU CLAIMANT

AND

RAI PLYWOODS (KENYA) LTD RESPONDENT

RULING

1. Judgment in this suit was delivered on 7th March, 2024 and decree issued on 7th May, 2024.
2. Upon the decree being issued the parties entered into a consent on 4th September, 2024 in which they agreed on the mode of satisfaction of the decree.
3. It is the respondent's averment that it settled the decree in the manner agreed in the consent. However, there arose a disagreement over payment of statutory deductions with the Claimant/decreed-holder insisting that no statutory deductions may be recovered from the decretal sum while the Respondent states that it has already deducted and remitted the statutory deductions.
4. The disagreement resulted in the Claimant instructing auctioneers to proclaim and attach the property of the Respondent/Judgment-Debtor.
5. In the application dated 6th December, 2024, the Applicant, who is the Respondent/Judgment-Debtor in the suit, seeks the following orders:
 - a. Spent;
 - b. That pending the hearing and determination of this Application inter partes, this Honorable Court be pleased to grant stay of execution of the Judgement delivered herein on 7th March 2024 and the consequential Decree dated 7th May 2024;



- c. That the Honourable Court be pleased to unconditionally raise the Proclamation Notice and set aside the attachment conducted by the Claimant through its agents Lister Auctioneers pursuant to the Warrants of Attachment of Movable Property dated 12th November 2024 issued to Lister Auctioneers;
 - d. That the Honourable Court be pleased to order the Claimant and/or its agent Lister Auctioneers and/or any other agent or auctioneer having possession to unconditionally release motor vehicle registration number KBH 777V to the Respondent forthwith;
 - e. That upon grant of prayer (d) above the Honourable Court be pleased to order OCS Eldoret Police Station or Eldoret Police Station, as the case may be, to provide escort, security and/or any necessary assistance to the Respondent, its agents and/or servants to assist in the unconditional release of the Respondent's motor vehicle registration number KBH 777V;
 - f. That the decretal sum be subject to Pay As You Earn and other statutory deductions;
 - g. That the auctioneer's fees be borne by the Claimant;
 - h. That the costs of the application be borne by the Claimant; and
 - i. That this Honourable Court be pleased to issue such further orders as it may deem to be in the interests of justice.
6. The grounds in support of the Application as set out on the face of the application are that:
- i. That pursuant to being served with the Judgement and Decree of this Honourable Court in the instant matter, the Respondent being the judgement debtor in the matter herein, entered into a Consent with the Claimant dated 4th September 2024, in order to outline the manner in which the decretal sum should be settled.
 - ii. That pursuant to the Consent, and the Respondent successfully settling the Consent sum, the Respondent and the Claimant have regrettably disagreed on whether and how much of the decretal sum should be set off against statutory deductions before they are remitted to the Respondent.
 - iii. That this disagreement has arisen out of the bad faith negotiations with the Respondent's advocate on record, who has consistently failed to address the Applicant's advocates who have on several occasions, being the 6th, 12th, 27th, and 29th days of November 2024, made efforts to communicate their position on statutory deductions on the decretal sums.
 - iv. That given the lack of communication by the Claimant's advocate, the Respondent settled the owed sum which was set off against a previously communicated amount which was tabulated and shared with the Respondent to illustrate the amount rendered as statutory deductions.
 - v. That the Claimant's advocate, after the full settlement of the consent sum, wrote to the Respondent's advocate to inform them of their decision to execute for the amount being such necessary statutory deductions.
 - vi. That counsel for the Claimant has repeatedly communicated that his client is bound by the court's judgement and expects full payment of the decretal sum void of any statutory deductions, despite such a similar dispute already having been determined by the Industrial Court's ruling in *Hosea Njeru Kagundu v Kenya Union Of Commercial Food And Allied Workers* [2012] eKLR wherein the position of the court emphasized that any such payments should be subject to statutory deductions as if it were paid in the ordinary course of business.



- vii. That though having advised counsel for the Claimant on the said precedent, the Claimant has proffered a contrary opinion and consequently threatened, through an email dated 2nd December 2024, to proceed with execution of the deducted amount, to the detriment of the Applicant.
 - viii. That it is therefore in the manifest interests of fairness and the administration of justice that the Notice of Motion filed herewith is set down for hearing as a matter of urgency and the orders sought therein are granted at the earliest opportune time.
 - ix. That the Respondent is keen to receive this Court's guidance and Ruling as to whether the amounts due to the Respondent for unfair termination should be paid subject to statutory deductions which the Applicant should remit to the Kenya Revenue Authority.
 - x. That the Respondent stands guided by the Industrial Court's ruling in Hosea Njeru Kagundu v Kenya Union Of Commercial Food and Allied Workers [2012] 1 eKLR wherein the position of the Court emphasized that any such payments should be subject to statutory deductions as if it were paid in the ordinary course of business.
 - xi. That the Claimant has gone forward to attach the Respondent's assets, and issue an attachment notice, relying on a proclamation that has been overtaken by events given that the Applicant has since paid the full decretal sum, subject to statutory deductions.
 - xii. That such clarity is needed in order to realize the settlement and subsequent conclusion of this matter.
 - xiii. That it is therefore in the manifest interests of fairness and the administration of justice that the orders sought herein are granted.
7. The application is further supported by the affidavit of Arun Kumar Singh, the Financial Controller of the Applicant sworn on of 6th December, 2024 in which he reiterates and expounds on the grounds in support of the application.
 8. The Claimant/Decree-Holder filed a replying affidavit sworn on 15th January, 2025 in which he deposes that the Applicant did not comply with the consent reached by the parties and is yet to fully remit the instalments for the months of November and December, 2024.
 9. He denies that the Applicant has fully complied as averred in the application and terms the averments as untrue and misleading.
 10. He further deposes that the consent signed by the parties has a default clause providing for execution to issue in the event of default.
 11. He deposes that the decree did not provide for statutory deductions and neither did the consent between the parties.
 12. He deposes that following the default of the Applicant execution was levied against it and the Applicant is liable to pay auctioneers charges.
 13. The parties agreed that the court should render its determination on the application based on the grounds on the face of the Application and the affidavit in support thereof and the Claimant/Decree-Holder's replying affidavit without the need for parties to file submissions.
 14. Section 49 of the [Employment Act](#) provides for remedies payable in claims under the Act at section 49(1) as follows:



49. Remedies for wrongful dismissal and unfair termination
- (1) Where in the opinion of a labour officer summary dismissal or termination of a contract of an employee is unjustified, the labour officer may recommend to the employer to pay to the employee any or all of the following—
 - (a) the wages which the employee would have earned had the employee been given the period of notice to which he was entitled under this Act or his contract of service;
 - (b) where dismissal terminates the contract before the completion of any service upon which the employee's wages became due, the proportion of the wage due for the period of time for which the employee has worked; and any other loss consequent upon the dismissal and arising between the date of dismissal and the date of expiry of the period of notice referred to in paragraph (a) which the employee would have been entitled to by virtue of the contract; or
 - (c) the equivalent of a number of months wages or salary not exceeding twelve months based on the gross monthly wage or salary of the employee at the time of dismissal.
 - (2) Any payments made by the employer under this section shall be subject to statutory deductions.
15. The payments made to the Claimant/Decree-Holder were made under this section and are therefore subject to section 49(2) thereof.
16. Further, terminal benefits are subject to taxation under the *Income Tax Act* and the Claimant/Decree-Holder is not exempt from payment of tax.
17. Under the provision of the *Income Tax Act* employers are agents for purposes of deduction and remittance of Pay As You Earn (PAYE) deductible from all income from employment.
18. In the case of *Hosea Njeru Kagondvu v Kenya Union of Commercial Food and Allied Workers* [2012] eKLR, the court had occasion to discuss the issue of deduction of income tax from judgments and decrees arising out of employment claims and stated as follows:
- On whether the decree is subject to deduction of income tax, section 49 of the *Employment Act* provides for remedies for wrongful dismissal and unfair termination. The section provides that any payments made by the employer under the section shall be subject to statutory deductions. The words "Shall" connote that it is mandatory. The section does not give a judge an option to decide whether or not the benefits under the Section are taxable.
- The finding of the Court was to the effect that the Claimant was an employee of the Respondent. The benefits awarded by the Court were based on the provisions of Section 49. The *Income Tax Act* requires an employer to deduct PAYE from any Taxable income of an employee derived from employment. Failure to do so is an offense.
- The Constitution* of Kenya provides at Article 210 that no person shall be exempt from payment of tax unless exempted by Law. In the present case there is no exemption. To the contrary the Act requires that such payments be subjected to statutory deductions.
19. It is thus my finding that the Applicant was under obligation to deduct and remit PAYE from the decretal sum herein and pay the decree holder only the difference in full and final satisfaction of the



decree. As this is a legal requirement courts do not have to state the same in every judgment. It is a presumption that everyone knows the law.

20. For the foregoing reasons, unless the Claimant/Decree-Holder has a complaint on the amount deducted and remitted to KRA by the Applicant/Judgment-Debtor, the amount paid to him after deduction of PAYE was in full and final satisfaction of the decretal sum.
21. If the Claimant/Decree-Holder instructed an auctioneer after receiving the said payment, the fees and charges of the auctioneer are the liability of the Claimant/Decree-Holder.
22. The application herein dated 6th December, 2024 is hereby allowed with costs.
23. For the avoidance of doubt, the auctioneer's fees and charges are to be paid by the Claimant.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 13TH DAY OF FEBRUARY 2025

MAUREEN ONYANGO

JUDGE

