



**Brollo Kenya Limited v Wawire (Appeal E169 of 2024)
[2025] KEELRC 757 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 757 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E169 OF 2024
M MBARŪ, J
MARCH 6, 2025**

BETWEEN

BROLLO KENYA LIMITED APPELLANT

AND

CALEB KUFUU WAWIRE RESPONDENT

RULING

1. The respondent, Caleb Kifuu Wawire filed an application dated 23 January 2025 seeking orders that the sum of Ksh.810,000 plus accrued interest deposited on 8 October 2024 in the Judiciary account as security by the appellant from orders issued on 27 August 2024 be released to the firm of ;
Opwapo Advocates;
Account name – Opwapo Advocates;
Bank – NCBA Bank;
Account No: 556XXXXX18;
Branch – Nkrumah road.
2. The applicant averred that on 27 August 2024, the court granted an order of stay of execution to the respondent on condition that the decretal sum be deposited within 14 days. The appellant deposited Ksh.810,000 as security on 8 October 2024.
3. On 31 October 2024, the court delivered judgment and dismissed the appeal with costs to the respondent. The purpose of the funds deposited in court has since been fulfilled, and hence, they should be released to the respondent together with the accruing interests therefrom.
4. Wilberforce B. Opwapo supports the application, advocate, who avers that the security deposit should be released to the respondent upon dismissing the appeal.



5. In reply, the appellant filed Grounds of Opposition stating that the trial court awarded the respondent Ksh.810, 000 based on the gross salary, and the security deposit herein was to fulfil conditions for the stay of execution. The appellant has a legal duty to remit statutory dues on PAYE, SHA, NSSF, and Housing Levy from the decretal sum before payment of new to the respondent.
6. The respondent filed his Further Affidavit and avers that there is no dispute that the decretal sum is Ksh.810,000 as deposited in court as security, there is a further claim of Ksh.224,500 as costs awarded by the trial court through a decree issued on 15 August 2024. The security deposit herein should take into account such decree.
7. Both parties attended court and made oral submissions, which were analyzed.
8. It is common cause that the appeal herein arose from the trial court judgment delivered on 1 August 2024. The respondent, as the claimant, was awarded ksh.810,000, which sum was deposited as security for the due performance of the appeal herein, which has since been addressed with finality.
9. The decretal sum of Ksh.810, 000 arose from employment dues to the respondent as the employee. Under Section 49(2) of the Employment Act, this decretal sum is payable to the employee upon deduction of statutory dues.
10. Statutory dues are the dues every employer is bound to remit, whether outlined in the court judgment or not, as held in *Otieno v Omya East Africa Limited & another* [2022] KEELRC 1687 (KLR).
11. Sections 49(2) of the Employment Act must, therefore, be read together with section 19, section 37 of the Income Tax Act, the National Social Security Act, and include all laws that require the employer to make any payments to an employee which should be subject to;

Any payments made by the employer under this section shall be subject to statutory deductions.
12. Where the employer fails to apply the provisions of Section 49(2) of the Employment Act, the employer commits an employment offence subject to a sanction. Section 37(2) of the Income Tax Act provides for a penalty against an employer in the event of non-compliance with the provisions thereof.
13. The appellant is legally obliged to effect deductions from the court award. The deductible statutory dues are as stipulated under any law, including PAYE, NSSF, NHIF, SHA, Housing Levy, or other lawful deductions under Section 19 of the Employment Act. Evidence of such payment is imperative.
14. The sum of Ksh.810, 000 shall be released to the respondent upon the appellant's deduction of all statutory dues. Evidence of remittance of such dues is to be attached to the payment.
15. The respondent has claimed that the trial court awarded costs in the sum of Ksh.224, 500. The security deposit herein was to secure the appeal. This is the only matter this court should address.
16. For costs due and awarded by the trial court, the respondent should have secured its judgment from the trial court accordingly.

In this case, the application dated 23 January 2025 addressed;

- a. The appellant shall tabulate the statutory dues from the sum of Ksh.810, 000 and submit evidence of remittance to the respondent within 14 days;
- b. Serve the Deputy Registrar with the tabulations and only release the due net amount to the respondent through the advocates on record;



- c. Based on (a) above, whatever balance arises from Ksh.810,000 less net sum based on paid statutory dues shall be released to the appellant through their advocates;
- d. Where the appellant fails to address or file any evidence of statutory dues remittances within 14 days, the Deputy Registrar shall proceed and cause the entire security deposit of Ksh.810,000 to be released to the respondent.

For these proceedings, each party bears its costs.

DELIVERED IN OPEN COURT AT MOMBASA THIS 6TH DAY OF MARCH 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

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