



**Devyan Food Industries Kenya Limited v Kanga (Appeal E053 of 2024)
[2025] KEELRC 1872 (KLR) (27 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1872 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
APPEAL E053 OF 2024**

**J RIKA, J
JUNE 27, 2025**

**BETWEEN
DEVYAN FOOD INDUSTRIES KENYA LIMITED APPELLANT
AND
NANCY AWUOR KANGA RESPONDENT**

*(An appeal from the ruling of Hon. Lina Akoth in Nakuru C.M.E & L.R,C
Cause No. E103 of 2022 between the parties herein, delivered on 4th July 2022)*

JUDGMENT

1. The Trial Court delivered its Judgment in favour of the Respondent herein, way back on 20th July 2023.
2. The Respondent was awarded the sum of Kshs. 531,938.
3. The Appellant was aggrieved by the decision, and sought leave from the E&LRC to file appeal out of time.
4. Concurrently, the Respondent sought an order for stay of execution of the Judgment of the Trial Court.
5. Both orders were granted, in a ruling dated 22nd February 2024. The order for stay was conditional. The whole decretal sum was to be deposited in a joint-interest earning account, in the names of the parties' Advocates.
6. The Appellant did not deposit the decretal sum as ordered, and did not take steps to file and prosecute its intended appeal.
7. The Respondent reverted to the Trial Court and sought execution of decree by way of attachment of the Appellant's movables.



8. The Appellant again filed an application for stay of execution before the Trial Court dated 3rd June 2024, arguing that the Trial Court should determine if, the decretal sum was subject to statutory deductions; and that fresh proclamation, not the proclamation issued at the time the E&LRC gave its orders of stay of execution, should have been sought by the Respondent.
9. The Trial Court made a ruling on 4th July 2024 declining the application.
10. That ruling is the subject matter of the appeal filed herein.
11. The grounds of appeal are that the Trial erred in finding that proclamation was lawful; it erred in not determining whether statutory deductions were payable from the decretal sum; it generally misapprehended pertinent facts and applicable law; and failed to consider pertinent material placed before it.
12. It is proposed by the Appellant that the appeal is allowed; the ruling of the Trial Court set aside; and costs be borne by the Respondent.
13. The parties confirmed to the Court on 13th March 2025, that the Appellant had deposited security and filed its Record of Appeal. It was agreed that the appeal be considered and determined on the strength of the Record Appeal and submissions. The appeal was last mentioned before the Court on 7th May 2025, when the parties confirmed filing and service of their submissions.

The Court Finds : -

14. The brief ruling of the Trial Court is contained in paragraphs 5 and 6 of the ruling, extracted below.
15.
 - (5) “ Having perused the record, a decree was issued dated 10th October 2023, warrants of attachment issued dated 23rd October 2023, an application to reissue warrants was made on 23rd April 2024, and fresh warrants were issued on the 13th May 2024. Having perused the supporting affidavit of the applicant, the proclamation [attaching the subject motor vehicle] was signed on 1st November 2023, which was in my view within the limit of the warrants of attachment dated 23rd October 2023. The proclamation was therefore lawful.”
 - [6]. In the circumstances, the application dated 3rd June 2024 is dismissed with costs to the Respondent.”
16. The Trial Court addressed the issue of proclamation, and did so correctly in the view of the Court. The Appellant failed to honour the orders of stay of execution obtained at the E&LRC. There was nothing to compel the Auctioneers to have a fresh proclamation.
17. The Trial Court however was silent on the issue of statutory deductions. The issue was specifically raised at prayer 3 of the application before the Trial Court dated 3rd June 2024. It was not addressed in the ruling of the Court subject matter of the appeal.
18. The correct position is that awards of the Court are subject to statutory deductions, and the Appellant properly effected the relevant statutory deductions from the decretal amount.
19. This position has been underscored by the Court of Appeal in *Directline Assurance Co. Limited v Jeremiah Wachira Ichaura* [2016] eKLR; *Kioko Joseph [suing as the legal representative of the estate of Joseph Kilinda] v Bamburi Cement Limited* [2017] eKLR; and *Andrew Mukite Saisi v Tracker Group of Companies Limited* [2020] eKLR.



20. It was held that even though Judgment entered between the parties did not make provision, in express terms, for payment of tax, any amount that was paid to the Employee, was subject to taxation.
21. The E&LRC has followed these judicial precedents in *Kaniu v Family Bank Limited* [2023] KEELRC 3060 [KLR] ; and *DPL Festive Limited v Elijah Ochieng Rakuru* [2022] KEELRC950 [KLR].
22. The Court of Appeal relied on Section 19 [1] [f] of the *Employment Act*, 2007 which allows an Employer to make deductions which are authorized by any written law; Section 49 [2] of the *Employment Act* which makes awards of the Court subject to statutory deductions; and Section 37 of the *Income Tax Act*, which requires an Employer to deduct and remit PAYE tax. It also invoked KRA's Employers' Guide on PAYE.
23. The Court upholds ground 2 of the Memorandum of Appeal. The Trial Court erred in not addressing whether, statutory deductions were payable. The result was that, an impression was created, that the Trial Court upheld the position, that the Respondent was exempted from his statutory obligation on payment of income tax.
24. Ground 1 on proclamation as stated above is without merit.
25. Grounds 3 and 4 are not particular. An appeal must be founded on concise grounds, not on grounds such as stated by the Appellant, that the Trial Court generally misapprehended facts, or that the Trial Court erred by failing to consider extensive material touching on pertinent and substantial points of law. These grounds are imprecise. Grounds of appeal must be specific.

It is ordered : -

- a. The Appeal is allowed on ground 2.
- b. Statutory deductions are payable from the decretal sum in the Judgment of the Trial Court.
- c. No order on costs of the appeal.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU THIS 27TH DAY OF JUNE 2025.

JAMES RIKA

JUDGE

