



Bunde & 10 others v Family Health Options Kenya (Cause E161 of 2023) [2025] KEELRC 2082 (KLR) (15 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2082 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E161 OF 2023
HS WASILWA, J
JULY 15, 2025**

**BETWEEN
WILSON BUNDE & 10 OTHERS & 10 OTHERS CLAIMANT
AND
FAMILY HEALTH OPTIONS KENYA RESPONDENT**

RULING

1. The Respondent/Applicant filed a Notice of Motion dated 11th March 2025 seeking orders that: -
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 2. this Honourable court be pleased to stay the ex-parte orders issued in the application dated 13th January 2025 and the application dated 13th January 2025 and the application dated 27th February 2025 since both applications were made to mislead and hoodwink the court since this matter had been settled. This application be heard inter partes as a matter of urgency on such date and at such time as this Honourable Court may direct.
 3. upon hearing this application inter partes this Honourable court sets aside the ex-parte orders issued in the application dated 13th January 2025 and the application dated 13th January 2025 and the application dated 27th February 2025 since both applications were made to mislead and hoodwink the court since this matter had been settled. This Honourable Court be pleased to issue any further orders that may be deemed just and fair in the circumstances.
 4. costs of this application be provided for.

Respondent/Applicant's Case

2. The Applicant avers that upon calculation of due benefits upon leaving service, it was determined that the Respondents benefits totaled to Kshs. 3,529,114 and the Respondent embarked on settlement of



these benefits as duly calculated net of all taxes as stated in the law including but not limited to the provisions of the *Income Tax Act* and other statutory deductions.

3. The Applicant avers gross amount claimable was Kshs. 4,958,173 which was deducted Kshs. 1,429,059 being net taxes bringing about a net amount of Kshs. 3,529,114. This position was well communicated to the Claimants' advocate and thereafter payment started off.
4. The Applicant avers that upon full settlement of the net amount, the Claimants started demanding a further Kshs. 2,204,632 which was not part of the claim. The Respondent notified the Claimant's advocate the breakdown of the calculation and proceeded ex-parte while its advocate was away and the application for review was heard ex-parte.
5. The Applicant avers that subsequently, the Claimants filed another application seeking the grant of garnishee orders so as to allow a claim that never was and proceeded to obtain garnishee orders for a claim that never was and the matter as slated for inter partes hearing on 11th March 2025.
6. The Applicant avers that the entire claim is fictitious and if allowed by this court, it will culminate in unjust gratification of the Claimants since their claims were fully settled.
7. The Applicant avers that the Claimants were fully paid and there is no outstanding claim whatsoever. It urges the court to grants the orders as prayed lest it is subjected to irreparable and irrecoverable loss.

Claimants/Respondents' Case

8. ^{In} opposition to the Application, the Respondents filed a replying affidavit dated 25th March 2025 sworn by the 1st Claimant/Respondent and authorized by the other Claimants pursuant to Rule 9 of the Employment and Labour Relations Court (Procedure) Rules, 2016.
9. The Respondents aver the initial cumulative claim as per the substantive Statement of Claim dated 8th February 2023 was Kshs. 9,287,012 before PAYE. Vide an email of April 2023, the Applicant gave a proposal of Kshs. 3,529,114.
10. The Respondents aver that after negotiations, the parties consented to a figure of Kshs. 5,523,508.01 after PAYE, which consent was adopted as an order of the court on 8th November 2023. The consent was entered after considering all liabilities including PAYE and out of this amount Kshs. 3,418,875.60 had already been paid leaving a balance of Kshs. 2,204,632.91.
11. The Respondents aver that after the consent, the Applicant commenced payments on 22nd January 2024 delivering Cheque No. 100734 bearing Kshs. 671,204 and cheque No. 100733 bearing Kshs. 500,000.
12. The Respondents aver that out of the 11 Claimants, the Applicant has fully settled only two namely: Zipporah Karaba and Beatrice Adhiambo Obonyo and 9 of them are yet to be settled.
13. The Respondents aver that they filed a contempt of court application 17th July 2024 due to the Applicant not settling the dues as per the consent order on 8th November 2023. Vide a ruling delivered on 8th November 2024, the court directed that the parties meet to agree on any amount owing to the Claimants/Respondents and the matter was to be mentioned on 19th December 2024 to confirm settlement.
14. The Respondents aver that the Applicant's counsel wrote an email to the Claimants on 18th November 2024 informing them of their willingness to create time for a meeting and have the matter settled; which meeting did not take place.



15. The Respondents aver that the Garnishee Application dated 27th February 2025 preferred upon the court issuing of the executory orders on 27th January 2025 which orders were duly served upon the Respondent/Applicant on 13th February 2025 and despite that, the Applicant elected not to appear in court or respond to the Application.
16. It is the Respondents' case that there exists sufficient reason for this court to exercise its discretion in favour of the Claimants/Respondents and now to order the Respondent/Applicant to settle the balance Kshs. 2,204,634.91 owing to the 9 Claimants in full failure to which execution proceed.
17. The Respondents aver that the application is misleading and meant to deny the 9 Claimants' their rightful dues as per the consent order issued on 8th November 2023 and should be dismissed with cost.
18. ^{The} Respondents further filed grounds of opposition dated 25th March 2025 which reiterated the content of the replying affidavit.

Respondent/Applicant's Submissions

19. The Applicant submitted that the Claimant/Respondents were its employees and due to constraints beyond its control, their services had to come to an end. Pursuant to the termination of their contracts, the Applicant engaged the Claimant/ Respondents and the parties agreed on the settlements as follows: Wilson Odhiambo Bunde – Kshs. 691,887; Winfred Aswani – Kshs. 461,465; Dinah Akeyo Odongo – Kshs. 221,820; John Kimathi – Kshs. 215,142; Nancy Wairimu – Kshs. 171,940; Zipporah Karaba - Kshs. 238,843; Beatrice Adhiambo Obonyo - Kshs. 443,503; John Mutuma Ngeera- Kshs. 477,175; Eunice Agosa- Kshs. 144,526; and Stanley Mwawongo - Kshs. 744,029.
20. The Applicant submitted that the claimants were fully settled and all statutory deductions were made in accordance with the Income Tax Act and Project Implementation allowances (PIA) that were not surrendered were also netted off.
21. It is the Applicant's submission that the consent recorded and the Claimants want to rely on, only factored in the gross figures and the Claimants' counsel does not want to hear of any statutory deductions and is hell bent on claiming the gross amounts.
22. The Applicant submitted that allowing the Claimants/respondents to claim the gross amount will occasion gross injustice to the Respondent/Applicant since it will amount to unjust gratification of the Claimants over and above what they are entitled and effectively lead to expropriation of the Applicant.
23. The Applicant submitted that Respondents are claiming the amounts legally deducted to make the entire claim Kshs. 5 million. The Applicant notified the Claimants' advocate on the breakdown of the calculation, however, the Claimants proceeded ex-parte while the Respondents' advocates were away and the application for review was heard ex-parte. Further, the consent that the Claimants' counsel is seeking to rely on had gross figures and not net figures and it will be illegal to pay gross amounts when the law imposes a duty to make both statutory and contractual deductions.
24. The Applicant submitted that the Claimants have been filing a flurry of applications seeking to overturn the ruling that correctly determined the correctness of the calculation schedules so as to seek claims that never were. It urged the court to assess the attached payment schedules and dismiss the ex-parte orders obtained for garnishee orders when full and final settlements had been effectively made. The Applicant reiterated that there is no pending claim against them, and the ex-parte garnishee proceedings be set aside.



Claimants/Respondents' Submissions

25. The Respondents submitted that the application is fatally defective as it offends *the Constitution* and the rules governing this court as such should not be admitted and the same is meant to delay timely dispensation of the execution proceedings to the prejudice of the Respondents and should be struck out with costs.
26. The Respondents submitted that the application is frivolous, malicious and abuse of court process and has no basis warranting a dismissal to pave way for execution and/ or in the alternative, this court orders the Applicant to immediately or not later than seven days from the date of the ruling to pay the balance of Kshs. 2,204,632.91.
27. It is the Respondents' submission that the application does not satisfy the threshold for grant of interlocutory orders under Rule 5(2) of the Court of Appeal Procedure Rules, 2016 as the Applicant has not established a prima facie case with probability.
28. The Respondents submitted that the court must singularly address itself to the consent orders dated 8th November 2023 and terms therein signed by both parties on 7th November 2023, which is the absolute document that operationalized settlement.
29. It is the Respondents' submission that the consent order was not drawn by the Claimants but is a legally binding document and the Applicant must not be granted any latitude to attempt to amend it. The consent was drawn from a cumulative total as per individual and the only item for deduction was PAYE and nothing else.
30. The Respondents submit that the application is riddled with falsehoods that this court was misled in issuing the orders of 12th March 2025 through misrepresentation and material non-disclosure to the extent that the Applicant deliberately ignored and failed to disclose to the court of the existence of a valid consent order and with impunity.
31. I have examined the averments and submissions of the parties herein. By consent of the parties on 8/11/2023 before J Mwaure, the respondents agreed to settle the amounts owed subject to PAYE in 5 months equal installments for amounts over 500,000/- and installments of 2 months for amounts below 500,000/-.
32. A schedule showing how payment was to be paid before tax was attached to the consent signed by the respondents on 7/11/2023. The respondents now contend that they paid all the money due but from the consent of the parties filed herein, the amounts payable totaled kshs 6,434,016 (as per calculation) less tax. If the tax is deducted from this amount with the respondents admitting having paid only kshs 3,529,114/- there is still more to be paid which the respondents having not demonstrated how they paid off the same.
33. It is my finding that the respondents have not demonstrated how they have settled the payments and so the application they seek before court is untenable and unmerited. I decline to grant any stay order and direct the respondents to pay up what is due in default execution to proceed. Costs to the claimants.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 15TH DAY OF JULY 2025.

HELLEN WASILWA

JUDGE

