



REPUBLIC OF KENYA



**Kinyeki & 88 others v Kenya Ports Authority & another (Cause
40 of 2015) [2025] KEELRC 2356 (KLR) (8 August 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2356 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 40 OF 2015
M MBARŪ, J
AUGUST 8, 2025**

BETWEEN

**JOHN WANGOMBE KINYEKI 1ST CLAIMANT
SAMUEL CHONDO MZALA 2ND CLAIMANT
BONIFACE NAFULA KHAYAKA 3RD CLAIMANT
BONIFACE NAFULA KHAYAKA 4TH CLAIMANT
KIMONYO KILIKU 5TH CLAIMANT
THOMAS OTIENO MWANGO 6TH CLAIMANT
FIDELIS MATI 7TH CLAIMANT
ELLY ALOO OLOO 8TH CLAIMANT
PIUS NDWIGA 9TH CLAIMANT
ABDALLA MWAJASI 10TH CLAIMANT
DOMINICK OCHINO ONG'OMBE 11TH CLAIMANT
ZACHARIA TOWETT 12TH CLAIMANT
MESHACK MWANZOKA 13TH CLAIMANT
MOHAMED OMAR 14TH CLAIMANT
DANIEL KIOKO KITONYI 15TH CLAIMANT
FREDRICK MAWEU MUTAVI 16TH CLAIMANT
PATRICK K MWIKYA 17TH CLAIMANT
PETER MUNYONYO ONYANGO 18TH CLAIMANT
T'WALIB MWAMZANDI 19TH CLAIMANT**



RAPHAEL KURIA	20 TH CLAIMANT
KENNEDY OPICHE	21 ST CLAIMANT
. PHILISTER JELAGAT (SUNG AS THE ADMINISTRATOR OF THE ESTATE OF ROBERT LELEY)	22 ND CLAIMANT
MOHAMED Y ABDULLE	23 RD CLAIMANT
SIMEON KIPLANGAT TOWETT'	24 TH CLAIMANT
GEORGE MAHERO	25 TH CLAIMANT
STANLEY KABURIA MARETE	26 TH CLAIMANT
WASHINGTON OTWOMA	27 TH CLAIMANT
MOSE KIPRONO KURGAT	28 TH CLAIMANT
DANIEL KATEE	29 TH CLAIMANT
MARTIN MWANYIKA	30 TH CLAIMANT
ALI KASSIM SETI	31 ST CLAIMANT
DENNIS ANGWENYI	32 ND CLAIMANT
WILLIAM OTIT'	33 RD CLAIMANT
PETER ADEMBESA WETUKA	34 TH CLAIMANT
OSURO ATUKE	35 TH CLAIMANT
FRANCIS MOLE OLE KANOKO	36 TH CLAIMANT
BUGU NASSORO	37 TH CLAIMANT
JARED NYAMATO	38 TH CLAIMANT
KENNETH WANDERA	39 TH CLAIMANT
STEPHEN GATOGO	40 TH CLAIMANT
KHALIFA MANENO	41 ST CLAIMANT
OWALA ISAYA GURA	42 ND CLAIMANT
NASSORO MASHOBO	43 RD CLAIMANT
AUSTIM WANYAMA	44 TH CLAIMANT
MARTIN YATOR	45 TH CLAIMANT
SHOSI MOHAMED SHEKUE	46 TH CLAIMANT
LUKA KANDA BOWEN	47 TH CLAIMANT
AMOS ODERO	48 TH CLAIMANT
MWADZAME TINGA MWARUWA	49 TH CLAIMANT
JAMES M MUNYALO	50 TH CLAIMANT



SAMSON NYALILEY	51 ST CLAIMANT
WILLIAM LEBO	52 ND CLAIMANT
PAUL CHIRCHIR	53 RD CLAIMANT
RONNIE MWADIME	54 TH CLAIMANT
SHEKUE KAHALE	55 TH CLAIMANT
ISAAC APPOLO OGOLA	56 TH CLAIMANT
MKUTANO KALAMA	57 TH CLAIMANT
ALI HAMISI MWAMANENO	58 TH CLAIMANT
BISMARCK MUSYOKA MITAU	59 TH CLAIMANT
RAMADHAN MDAKA	60 TH CLAIMANT
PAUL OGAI	61 ST CLAIMANT
MUINDI TIKIKO MUSOMBA	62 ND CLAIMANT
BERNARD C BULINDA	63 RD CLAIMANT
FRANCIS M KIEMA	64 TH CLAIMANT
JOHN MWIZI	65 TH CLAIMANT
YUSUF AHMED	66 TH CLAIMANT
PETER GITAU	67 TH CLAIMANT
GENGE OMONDI	68 TH CLAIMANT
NELSON RIMBA	69 TH CLAIMANT
MAURICE OBONDO	70 TH CLAIMANT
JOSEPH MULIMU ASHIBAKA	71 ST CLAIMANT
JOEL KING'OLA MUVITI	72 ND CLAIMANT
AMOS MUSAVI	73 RD CLAIMANT
JOHN MARITIM	74 TH CLAIMANT
ARDENER OGUTU	75 TH CLAIMANT
DOMINIC WAMBUA KASOO	76 TH CLAIMANT
PETER OKOLLAH MAK'SEWE	77 TH CLAIMANT
CHARLES KIPKOECH KOTUT	78 TH CLAIMANT
GIDEON BARAKA	79 TH CLAIMANT
SAID MWAROPIA	80 TH CLAIMANT
MWINYI BWAJUMA FAKI	81 ST CLAIMANT
KHAMISI JUMA OMAR	82 ND CLAIMANT



ERIC AMUMA	83 RD CLAIMANT
KORI KALIST	84 TH CLAIMANT
WILLIAM M KABIU	85 TH CLAIMANT
STANLEY MAIYO	86 TH CLAIMANT
ONESMUS OLILO	87 TH CLAIMANT
MBWANA BANDA	88 TH CLAIMANT
MOSES KIMUTAI KIRUI	89 TH CLAIMANT

AND

KENYA PORTS AUTHORITY	1 ST RESPONDENT
MANAGING DIRECTOR, KENYA PORTS AUTHORITY	2 ND RESPONDENT

RULING

1. The judgment herein was delivered on 31 October 2024. Parties were directed to table the award and costs and report to the court for adoption. There has been no agreement on the three main issues;
 - a. Whether the compensation of 3 months is subject to PAYE and the rate;
 - b. Whether the interests should be subject to income tax and the rate;
 - c. Whether the interest amounts attract 5% withholding tax.
2. The claimant submitted that on the award of 3 months' compensation, both parties agreed that the basis of calculation should be the salary earned in January 2012. The PAYE due was deducted, and subjecting it to PAYE at this point would be a double deduction.
3. The award of compensation related to wrongful actions of the respondent should be a restorative payment rather than income, which should not be subject to PAYE.
4. The remedies for wrongful dismissal and unfair termination are different and separate. Under the Act, upon the finding of unfair termination of employment, section 49 requires the assessment and award of various reliefs, including wages of up to 12 months. Such payment is not subject to further income tax.
5. The claim was not based on wrongful termination of employment. The respondent should not blame the claimants for summary dismissal, which is found unfair.
6. Under sections 20 and 21 of the Act, the allowed deductions from an employee's salary should be lawful and include statutory deductions. In this case, the claimants have worked for their pay, and the award should be paid in full if justified. In *Ibrahim Manyara v Registered Trustees of Agricultural Society of Kenya (ASK)* [2012] eKLR, the court held that the Income Tax stipulates what is chargeable under section 3. Income from employment is therefore excluded under the *Income Tax Act*. In *AM Bahaji & Company Limited v Kenya Ports Authority* [2020] eKLR, the court held that court decrees are not to be subjected to deductions.



7. The claimants submitted that there should be no deduction for withholding tax at 5% on the interests which arise from damages awarded by the court. There is no provision under the Act or the [Income Tax Act](#) requiring such a deduction.
8. The respondents submitted that the award of 3 months' compensation is subject to statutory deductions, including PAYE. Section 5 of the [Income Tax Act](#) requires any gains from an employee's income, including salary, wages, leave pay or fees, to be paid less PAYE. The 3 months awarded to the claimants are subject to a deduction. The 1st respondent is under a statutory obligation under section 37 of the [Income Tax Act](#) to withhold PAYE and remit to KRA.
9. Section 49 of the Act gives guidelines on the court award, and the employer has a statutory duty to deduct statutory dues and remit accordingly.
10. In the case of *Felicity June Kuria v Egerton University* [2024] eKLR, the court held that a decree of the court founded on employment benefits amounts to taxable income under the [Income Tax Act](#). Section 19 of the Act requires the employer to deduct income tax from the employee and remit it to the tax authority.
11. The respondent submitted that the interest in the decretal sum should be subject to income tax. Under section 2 of the [Income Tax Act](#), interest is defined as payable in any manner in respect of a loan, deposit, debt, claim or other rights or obligations.
12. The interest in an award of the court represents a penalty interest payable to the employee. Under the [Income Tax Act](#), section 35(3) (b), interests attract a withholding tax of 15%. In *Michael Muimi Kimanzi v Jamsons Industries Limited & another* [2016] eKLR, the court held that section 33(3) of the [Income Tax Act](#), where interests have accrued, should be subject to withholding tax. This being a compensation suit, the same attracts interest at the rate of 15%. The application of a 5% withholding tax rate does not apply in this case. The interests awarded by the court attract a withholding tax at 15%.
13. The respondent submitted that they engaged an audit firm and, based on their expert advice, the award of the court should be paid less PAYE as it relates to employment, and the interest rates should be based on withholding tax at a 15% rate.

Determination

14. The judgment delivered on 31 October 2024 included the following awards:
 - a. Damages at 3 months' salary for each claimant.
 - b. Costs at 50%.
15. The claimants assert that under section 49 of the Act, there is a distinction between reliefs for wrongful termination of employment and summary dismissal. Although the Act is not elegantly drafted, the core of section 49 of the Act is to address the remedies that the court may award, in singular form or multiple. Upon the finding that there was unjustified termination of employment either by summary dismissal or termination of employment under sections 44 and 45 of the Act, may recommend to the employer to pay to the employee any or all of the following-

Unlike the award of damages under section 12 of the Employment and [Labour Relations Act](#), in this case, there was an award of compensation under section 49 of the Act.

The award of 3 months' compensation to the claimants is subject to section 49(2) of the [Employment Act](#) (the Act). All dues paid to the employees, including claimants, are subject to statutory deductions, including PAYE.



The claimants assert that the wage applicable is the one paid in January 2012. That wage was subjected to PAYE, and to make a new PAYE would be double taxation.

The award of the court relates to the employee's last earned wage. The last day on the shop floor.

16. The award of compensation hence accrues as of 31 October 2024 and not earlier. There has been no previous payment of the 3 months award, save that the rate to apply is the last wage earned by the employee, whether still in service, retired or has exited the shop floor. The rate to use in making the necessary statutory deduction, including PAYE, is based on the last wage paid to the claimant.
17. Section 49(1) (c) of the Act requires;
 - (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.
18. Whereas under section 49(2) of the Act requires;
 - (2) Any payments made by the employer under this section shall be subject to statutory deductions.
19. The sequence of payments upon the court judgment is for the employer to apply the last gross monthly wage of the employee, which should then be subjected to statutory deductions.
20. On the question of withholding tax on the interest rates to apply, the case is that the awards herein were compensatory and accrued interests on the damages are removed from the [*Income Tax Act*](#).
21. On its part, the respondent asserts that the due interests payable to the claimant should be subject to the [*Income Tax Act*](#), which allows for a 15% withholding tax.
22. However, the award of compensation herein was without any interest. Section 12(4) of the [*Employment and Labour Relations Court Act*](#) requires the court to award compensation or damages, but the award of costs plus interest is discretionary. In this case, costs were awarded at 50% without interest. The requirement that a successful suit should automatically attract costs is a commercial element removed from the court proceedings. This is remotely addressed under Rule 70 of the Employment and Labour Relations Court (Procedure) Rules to provide that;
 - (4) In proceedings under this Act, the Court may, subject to the rules, make Such orders as to costs as the Court considers just.
And; Rule 70(5) provides;
 - (5) Where a suit involves a liquidated amount that is claimed and specified at the time of filing a statement of claim and the Court orders that the amount claimed or part of the amount to be paid to the claimant, it may, in addition to that order, direct that interests be paid on the liquidated amount awarded at court's rates.
23. The award of costs or interests is discretionary and must be specified in the orders of the court.
24. The contestations of what interest rates are to apply should not be in issue given the awards herein.



- 25. The consent Order dated 31 May 2024 on the payments of surcharged amounts was made by agreement that;

The 1st respondent herein shall refund to each of the claimants the amounts surcharged by the 1st respondent plus interest thereon at 12% computed from the date of the surcharge to 31 May 2024.
- 26. As outlined above, any dues payable to the employee, including allowances, are subject to statutory deductions; section 49(2) of the Act applies.
- 27. Parties to proceed with the tabulation of the 3 months compensation awarded based on section 49(1) and (2) of the *Employment Act*. The awards shall be subject to statutory deductions based on the last wage earned, given the judgment delivered on 31 October 2024;
- 28. The costs due shall be at 50% and shall be assessed by the taxing master.

DELIVERED IN OPEN COURT AT MOMBASA THIS 8 DAY OF AUGUST 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

