



**Kathyindi v Kenya Film Commission (Cause E528 of 2021)
[2024] KEELRC 13605 (KLR) (21 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13605 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E528 OF 2021
JW KELI, J
NOVEMBER 21, 2024**

BETWEEN

ALEX MULWA KATHYINDI CLAIMANT

AND

KENYA FILM COMMISSION RESPONDENT

RULING

1. The Claimant, being dissatisfied with the deduction of statutory dues from his compensatory award by the Respondent vide the instant application dated 19th June 2024 sought the following Orders:-
 - a. Spent
 - b. That the judgment of this Honorable court delivered in open court be and is hereby clarified as regards the payments owed to the Claimant by the Respondent.
 - c. That costs of this application be borne by the Respondent.
2. Grounds of the application
 1. That despite the Applicant/Decree holder being awarded a sum of KShs.3,730,960/=, the Respondent has only paid a sum of KShs.2,888,7000/=.
 2. That upon further consultation with the Respondent, the Respondent insists that the amount remitted to the Applicant/Decree holder is less statutory deductions.
 3. That the judgment rendered on the 16th day of November 2023 was express as regards the amount of KShs.3,730,960/= to be paid by the Respondent/Judgment Debtor and did not touch on any statutory deductions.
 4. That the Respondent/Judgment Debtor has been adamant to release all the funds owed to the Claimant as directed by the Honourable Court.



5. That the Applicant/Decree holder intends to clear out the ambiguities in the said judgement dated 16th November 2023.
6. And the annexed supporting Affidavit of Alex Kathyindi Mulwa and other or further grounds as may be adduced at the hearing thereof.
7. Unfortunately the statelaw did not successfully upload their response on the portal with feedback being ‘failed to load PDF’. The court did not have sight of the response when writing the decisions and they did not file written submissions despite being opportunity to do so.

Decision

3. The application was unopposed. The court noted unsuccessful attempt by the Respondent to lodge response. The applicant left the court to decide the application relying on his pleadings.
4. The claimant upon being issued with judgment in his favour on the 16th November 2023 states that that despite the Applicant/Decree holder being awarded a sum of KShs.3,730,960/=, the Respondent has only paid a sum of KShs.2,888,7000/=. That upon further consultation with the Respondent, the Respondent insists that the amount remitted to the Applicant/Decree holder is less statutory deductions. That the judgment rendered on the 16th day of November 2023 was express as regards the amount of KShs.3,730,960/= to be paid by the Respondent/Judgment Debtor and did not touch on any statutory deductions. That the Respondent/Judgment Debtor has been adamant to release all the funds owed to the Claimant as directed by the Honourable Court. That the Applicant/Decree holder intends to clear out the ambiguities in the said judgment dated 16th November 2023.
5. The Judgment dated 16th December 2023 by Hon. Justice Ocharo Kebira did not indicate that the award was subject to statutory deductions. The court in making an award for compensation for unlawful termination is to be guided by the provisions of section 49 of the Employment Act as stated in section 50 of the Act to wit:- “50. Courts to be guided. In determining a complaint or suit under this Act involving wrongful dismissal or unfair termination of the employment of an employee, the Industrial Court shall be guided by the provisions of section 49.”
6. The compensation order was done by the court as guided under section 49(1)C to wit: ‘(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.’ In this case, the court exercised its judicial discretion and awarded the claimant compensation equivalent of 11 months’ salary.
7. Section 49(2) of the Employment Act provides:- ‘(2) Any payments made by the employer under this section shall be subject to statutory deductions.’ The court returns that the deductions of the statutory deductions under section 49(2) of the Employment Act is a legal requirement on the employer and need not be stated by the court. The court may state the award is subject to statutory deductions as a matter of an abundance of caution to remind the employer of its statutory obligation and in the process also manage the expectations of the claimant. It may be a good practice but not mandatory in the opinion of this court. The court’s interpretation of the provision is to the effect that it is the legal obligation of the employer to make the statutory deductions from the compensatory award which according to the applicant they did.
10. The Court holds that the compensation awarded in the judgment dated 16th November 2023 was less statutory deductions according to the provisions of section 49(2) of the Employment Act. The court makes no order as to costs.
12. It is so Ordered.



READ, DELIVERED AND SIGNED IN OPEN COURT AT NAIROBI THIS 21ST DAY OF NOVEMBER, 2024.

JEMIMAH KELI

JUDGE

In the presence of:

C/A Caleb

Applicant -Ms Achieng h/b Omwansa

Respondent- Odukenya

