



Kuri v Egerton University (Employment and Labour Relations Cause E003 of 2022) [2024] KEELRC 13524 (KLR) (20 December 2024) (Ruling)

Neutral citation: [2024] KEELRC 13524 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
EMPLOYMENT AND LABOUR RELATIONS CAUSE E003 OF 2022
ON MAKAU, J
DECEMBER 20, 2024**

BETWEEN

FELICITY JUNE KURI CLAIMANT

AND

EGERTON UNIVERSITY RESPONDENT

RULING

Introduction

1. By a Notice of Motion dated 7th June 2024, the applicant/Judgment debtor sought the following orders: -
 1. That this Honourable court be pleased to stay, set aside, and/or annul warrant of attachment dated the 23rd day of May, 2024 and the proclamation dated the 4th day of June 2024 by the Claimant/Respondent herein who has now proclaimed the Defendant/Applicant's properties.
 2. That this Honourable court be pleased to issue a declaration that the warrant and proclamation issued by Quickline Auctioneers are premature, irregular, inaccurate, un-procedural and unlawful as the same are premised upon an attempt by the Claimant/Respondent to extort and/or illegally extract funds from the Defendant/Applicant's contrary to the terms of the consent order between the parties dated the 15th day of December, 2023 and the consequent decree despite the former fully abiding by the terms of the said consent order.
 3. That this Honourable court be pleased to grant any other order and/or directions as it deems fit, just and fair.
 4. That the claimant/Respondent be condemned to pay costs of the application together with auctioneer's charges.



2. The application is supported by the affidavits sworn by the applicant's Legal officer Ms. Janet Bii on 7th June 2024 and 16th July 2024 and it is opposed by the claimant vide her Replying Affidavits sworn on 24th June 2024 and 22nd July 2024.

Background

3. The applicant's case in brief is that the suit was compromised by a consent judgment in favour of the claimant in the sum of Kshs.2,553,886 plus costs and interest from the date of filing the suit; that the costs were also determined by consent in the sum of Kshs.132,925; that the decretal sum was paid by instalment up to the sum of Kshs.2,943,778.27 being an overpayment by Kshs.493,451; that the costs of Kshs.132,950 was outstanding; and that on 4th June 2024, the claimant executed for Kshs.1,190,680 being Kshs.493,451 outstanding balance of the decretal sum, costs of Kshs.132,950 and interest of Kshs.561,854.
4. It is further applicant's case that it deducted the sum of Kshs.564,304 from the terminal dues as withholding tax under section 4 of the *Income Tax Act*; that the execution was irregular and illegal since costs were yet to be taxed and no decree had been extracted; and that the demand for more pay except the outstanding costs of Kshs.132,925 is tantamount to extorting money from the University which is unlawful.
5. The claimant's case on the other hand is that indeed a consent judgment was entered in her favour in the sum of Kshs.2,553,886 before tax plus interest from the date of filing the suit until payment in full. She was also awarded costs of the suit which were agreed at Kshs.132,925.
6. It is further claimant's case that the applicant paid her a total of Kshs.2,060,425 by instalments, leaving a balance of Kshs.493,451 plus the costs of Kshs.132,925 and the accrued interest from the date of filing the suit. Hence the execution for the sum indicated in the warrants of attachment. She contended that a judgment debt does not attract tax and averred that the alleged tax deduction was not only illegal but mischievous since the applicant is not a collecting agent for the Kenya Revenue Authority. Besides, the applicant did not produce in court any documentary evidence to prove that the withheld tax was remitted to the Tax Authority.
7. Finally, the claimant averred that the applicant has come to court with dirty hands because it has not complied with the consent judgment and as such the application should be dismissed with costs.

Submissions

8. The parties also filed written submissions. The applicant submitted that the obligation to deduct tax or remit is not in the employee but the employer hence the reason for deducting the same from the claimant's final dues. For emphasis, it placed reliance on *Ian Edwards v Bytes Technology Group Kenya Ltd* (2018) eKLR, *Co-operative Bank of Kenya Ltd v Erastus Kihara Mureithi* (2013) eKLR and *Joseph Oganda Omondi v Sbi International Holding AG (Kenya)* (2015) eKLR where the court affirmed the obligation of the employer to deduct and remit income tax from his employees.
9. The applicant further submitted that execution was irregular, premature and illegal for want of a decree and certificate of costs. Further that if any decree was extracted, it was never presented to the applicant for approval. For emphasis, reliance was placed on *Vittone v SOS Children's Villages International* (Cause 295 of 2019) (2024) KEELRC 1103 (KRL) (9 May 2024) (Ruling).
10. On the other hand, the claimant submitted that the execution was proper in law because the applicant had failed to fully settle the consent judgment plus costs. Further that the applicant had failed to pay an accrued interest of Kshs.561,854.



11. The claimant further submitted that, since the employment relationship between the parties herein had ended, the applicant no longer had authority to deduct tax from the decretal sum. For emphasis, reliance was placed on *Ibrahim Manyara v Registered Trustees of Agricultural Society of Kenya (ASK) (2014) eKLR*.
12. The claimant further submitted that decrees of the court are not included as taxable item under the *Income Tax Act* and fortified the said submission by citing the *Ibrahim Manyara* case, above and *Am Bahaji & Company Limited v Kenya Ports Authority (2020) eKLR* where the courts agreed that, a court decree is not a form of income for purposes of income tax.
13. Finally, the claimant reiterated that no evidence of remittance of the deducted tax has been produced in court.

Determination

14. Having considered the application, affidavits and submissions the following issues fell for determination: -
 - a. Whether execution by the claimant was premature, irregular and illegal.
 - b. If the execution is found lawful, what is the correct amount payable to the claimant.

Premature, irregular and illegal execution

15. The applicable procedure in this case is the ELRC Procedure Rules, 2016 and specifically Rule 31 and 32. Rule 31 and 32 provides that:

“ 31

1. The Registrar shall draw, seal and issue an order or decree of the court.
2. An order or decree shall be drawn in accordance with the decision of the court and shall specify clearly in paragraphs the reliefs sought and granted, any other determination and costs, if any.
3. An order or decree shall specify the date on which the judgment was delivered.”

“32

1. The Registrar shall issue an order in execution of a decree.
2. Rules on execution of an order or decree shall be enforceable in accordance with Civil Procedure Rules.”

16. It follows that the above Rules of procedure do not contemplate any execution of the court’s decisions before the Registrar of the court has reduced the same into either an order or decree. This view is fortified by the case of *Vittone v SOS Children’s Villages International*, supra where the court held that: -

“In the circumstances, I find that the said warrants of attachment were issued irregularly and unprocedurally and should be set aside to the extent only if there being no decree on place.”



17. Having carefully perused the court record in this matter, I am satisfied that there is no decree or certificate of costs capable of being executed. After the parties signed and filed the consent judgment and costs, no further steps were taken to cause the Registrar prepare and issue a decree and certificate of costs. Consequently, I find and hold that the execution vide the warrants issued on 23rd May 2024 was premature, irregular, illegal and a nullity.

Amount payable

18. I do not need to go to the merits of this issue. However, I find it necessary to highlight that a decree of the court founded on employment benefits amounts to a taxable income subject to any provisions of the Income Tax Law that prescribes any waivers or reliefs. Such decree should be distinguished from a decree founded on other claims as per the cited cases. Section 5 of the [Income Tax Act](#) categorises earnings from employment as income for purposes of income tax.

19. I wish also to highlight that under section 19 of the [Employment Act](#), an employer has legal mandate to deduct income tax from his employee and remit it to the tax authority. Such mandate, in my view extends to all payments including salary arrears, gratuity and all other benefits which accrued before the termination of the employee's employment contract. In fact, section 49 of the [Employment Act](#) expressly provides that compensatory damages for unfair termination shall be subject to statutory deductions.

Conclusion

20. I have found that the impugned execution was premature, illegal and a nullity. I have also held that a decree founded on earnings or employment benefits constitute taxable income for purposes of income tax by dint of section 5 of the Income Tax. Consequently, the notice of motion dated 7th June 2024 is allowed in the following terms: -

- a. The Warrants of Attachments dated 23rd May 2024 and proclamation dated 4th June 2024 are set aside.
- b. The claimant is directed to comply with the procedure prescribed by the law on execution of court decisions.
- c. The applicant to serve the claimant with proof of PAYE remittances.
- d. Since the applicant acknowledges that it has not fully settled all the claimant's claims, I will not award costs to it.

DATED, SIGNED AND DELIVERED AT NYERI THIS 20TH DAY OF DECEMBER, 2024.

ONESMUS N MAKAU

JUDGE

Order

This ruling has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N MAKAU

JUDGE

