



**Mbukua v Water Services Trust Fund (Cause 1323 of 2017)
[2023] KEELRC 900 (KLR) (19 April 2023) (Ruling)**

Neutral citation: [2023] KEELRC 900 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1323 OF 2017**

J RIKA, J

APRIL 19, 2023

BETWEEN

ROSAITA NGINA MBUKUA CLAIMANT

AND

WATER SERVICES TRUST FUND RESPONDENT

RULING

1. Judgment was delivered in favour of the Claimant, on 27th May 2022.
2. The Court stated that the Respondent shall pay to the Claimant, redundancy pay equivalent of 3 month's gross salary at Kshs. 1,056,000, as had been offered by the Respondent; and 12 months' salary in compensation for unfair termination, at Kshs. 4,224,000 – total Kshs. 5,280,000.
3. The Respondent has filed two Applications dated 1st September 2022 and 7th March 2023 respectively. The first seeks clarification from the Court, whether Kshs. 2,129,000 paid to the Claimant by the Respondent during the proceedings, is deductible from the Judgment sum of Kshs. 5,280,000; and whether the sum is subject to statutory deductions. The second seeks stay of execution of Judgment and setting aside of warrants of execution dated 2nd March 2023, and proclamation dated 2nd March 2023.
4. The Applications are founded on the Affidavit of Respondent's Legal Manager Halima Ali sworn on 1st September 2022, and the Affidavit of Legal Officer Salome Tanui, sworn on 7th March 2023.
5. The Applications are opposed through the Replying Affidavit of the Claimant, filed on 10th March 2023. They were argued orally by the Parties' Advocates, on 14th March 2023.



The Court Finds

6. The Judgment of the Court is clear that the sum of Kshs. 5,280,000, comprised compensation and severance pay.
7. Paragraph 25 showing a sum of Kshs. 2,129,000 was paid to the Claimant by the Respondent in the course of the proceedings, did not concern compensation and severance pay. It concerned other items which are detailed in the Judgment.
8. The answer to the question whether the sum of Kshs. 2,129,000 is deductible from the Judgment sum, must be no, it is not deductible.
9. The question whether the Judgment sum is subject to statutory deductions, is yes. All awards of the Court are subject to statutory deductions.
10. The last question is whether the warrants of execution and proclamation against the Respondent issued illegally.
11. The Respondent is described at paragraph 2 of the Statement of Claim, as a State Fund, established under the *Water Act*, 2002.
12. It is a Government entity, which is protected under Section 21[4] of the *Government Proceedings Act* and Order 29 rule 2[2] of the *Civil Procedure Rules*, from execution or attachment.
13. The warrants of attachment and proclamation issued against these laws, and are therefore set aside.

It Is Ordered

- a. The sum of Kshs. 2,129,000 is not deductible from the Judgment sum.
- b. The Judgment sum is subject to statutory deductions.
- c. The warrants of execution and proclamation issued illegally and are set aside.
- d. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 19TH DAY OF APRIL 2023.

**JAMES RIKA
JUDGE**

