



**Karama v Grain Industries Limited (Cause 24 of 2020)  
[2023] KEELRC 1194 (KLR) (11 May 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1194 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 24 OF 2020**

**M MBARŪ, J  
MAY 11, 2023**

**BETWEEN**

**NAFTARY NDAMBIRI KARAMA ..... CLAIMANT**

**AND**

**GRAIN INDUSTRIES LIMITED ..... RESPONDENT**

**RULING**

1. The claimant filed application dated March 23, 2022 seeking for orders that;  
  
This court do hereby issue an order determining how much is deductible from the sum awarded on 03/12/2021
2. The application is supported by the claimant's affidavit and on the grounds that judgment herein was delivered for the claimant against the respondent for the sum of Ksh. 199,019 less PAYE by February 1, 2022 failing which interests to be payable thereon at court rates from the date of filing the suit till paid in full. the respondent was also directed to pay costs.
3. The parties have failed to agree on the amount deductible from the judgment award and hence seek the intervention of the court. the respondent issued the claimant with cheque for Ksh. 280,130 a difference of Ksh. 110,002 meaning the deduction is Ksh. 88,997. This translates to a PAYE and withholding tax which is not due. the respondent also indicated that they deducted a loan balance which the claimant had not cleared but the claimant has since cleared such loan and sent communication to the respondent.
4. The claimant served the respondent with the instant application and there is no response.
5. The claimant attended court and made submissions that the judgement award was Ksh. 199,019 and costs were agreed upon at Ksh. 170,108 total being 369,149.



6. The claimant has attached his tabulations to his supporting affidavit that from the award of Ksh. 199,019 costs were agreed at Ksh. 170,180 and he has only been paid Ksh. 280,130 leaving less PAYE and total due is Ksh. 40,068.78.
7. On December 3, 2021 the court delivered judgment herein in the following terms;
  1. Payment of Ksh. 199,019 (less PAYE) by 01.02.2022 failing interest to be payable thereon at court rates from the date of filing the suit till payment in full;
  2. The respondent to pay the claimant's costs of the suit;
  3. ...
8. On the judgment sum of Ksh. 199,019 the due PAYE is Ksh. 40,391.57 as required under the provisions of section 49(2) of the *Employment Act*, 2007 that;
  - (2) Any payments made by the employer under this section shall be subject to statutory deductions.

On the total sum awarded less PAYE, the total due is Ksh. 158,628.

The parties have since agreed on costs all at Ksh. 170,108.

The award plus total dues is Ksh. 328,736.

Of this amount, the claimant has been paid Ksh. 280,310.

Total balance due is Ksh. 48,426.
9. The claimant in his affidavit asserts that he had a loan to Ajab Sacco which he has since repaid in full. pursuant to section 19(1)(h) of the *Employment Act*, 2007 an employer is allowed to deduct any outstanding loan or other facilities advanced to the employee at the end of employment. The employer has the duty to keep work records relating to such amounts deducted from an employee's salary. Without the respondent attending or filing any replying affidavit to challenge the averments by the claimant that he has since repaid his loan in full, the court is left with no other evidence to challenge the same.
10. On the court award, the dues owing shall be paid at Ksh. 48,426.
11. The claimant is seeking costs for filing this application which is necessitated by the respondent. indeed, despite the respondent being served, there is no attendance. The claimant is entitled to his costs assessed at Ksh. 20,000 all-inclusive for these proceedings.
12. Accordingly, application dated March 23, 2022 is found with merit and the dues owing to the claimant assessed at Ksh. 48,426; costs at Ksh. 20,000.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 11<sup>TH</sup> DAY OF MAY, 2023.**

**M. MBARŪ**

**JUDGE**

**In the presence of:**

Court Assistant: Japhet Muthaine

..... and .....

