



**Mwaura v Management University of Africa (Cause 135 of 2013)
[2023] KEELRC 1979 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1979 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 135 OF 2013
NZIOKI WA MAKAU, J
JULY 27, 2023**

BETWEEN

DAVID NJIHIA MWAURA CLAIMANT

AND

THE MANAGEMENT UNIVERSITY OF AFRICA RESPONDENT

RULING

1. The applicant seeks stay of execution of the judgment and decree of this court delivered on June 19, 2018 or any part thereof. It is asserted that the respondent fully paid the decretal sum and there is nothing owing. The claimant issued a proclamation in execution of warrants for an amount of Kshs. 2,861,210/- precipitating the motion. The claimant asserts that a sum of Kshs. 2,861,210/- is owing and outstanding from the amount decreed to be payable.
2. The application was urged on June 14, 2023 by Mr. Thangei for the respondent/applicant and Mrs. Wachanga appeared for the claimant/respondent. It was argued that the only issue for determination was whether the amount decreed as payable was subject to statutory deductions. Mr. Thangei argued that the Court of Appeal in *Kioko Joseph [suing as the representative of the estate of Joseph Kilinda] v Bamburi Cement Limited* [2017] eKLR held that awards of this Court are subject to statutory deductions and in particular PAYE. He submitted that the respondent had brought this to the attention of Counsel for the claimant who for some part seemed to agree but has apparently now changed tack and assert there is no deduction due. He submitted that the tabulation of the calculations showing the deductions was shared with the claimant's advocate. He asserts the decision of the Court of Appeal is binding and that the issue is settled. He submits that the issue of interest now being claimed by the claimant is calculated on the entire amount including the sums already settled as well as on PAYE which does not belong to the claimant but the taxman. The respondent submits the interest being claimed is calculated till July 8, 2022 yet the last instalment was paid in July 2020. Mr. Thangei submitted that the claimant is seeking interest on money already in the claimant's hands. He argued that the Judgment was delivered in June 2018 and a sum of 2 million was paid on August 22, 2018



and the claimant runs interest on it as if it had not been paid. He asserts the interest claimed is not due. He submits that even if interest was due, it has been paid. He urged the court to find the claimant is seeking to reap where they did not sow. He submitted that the act of remitting taxes does not amount to review of judgment but mere application of the law. He urged the court to find the sums due were paid and nothing is due presently.

3. The claimant was opposed and his Counsel Mrs. Wachanga submitted that the claimant disputed the subtraction of PAYE on amount granted by court. She submitted that the issue of statutory deductions should have been brought before court. She argued that this issue was not raised in judgment and that there was no mention of statutory deductions. Mrs. Wachanga submitted that the Applicant cannot impose deductions and drag decisions to support its deduction of PAYE. She submitted that the judgment was for Kshs. 4,817,700/- and that costs were taxed at Kshs. 395,978/-. She submitted that the respondent had, by its own admission, paid Kshs. 3,379,734/-. Counsel submits that it is not in dispute that the decretal sum was paid by instalments between 2018 and 2021. She submitted that it is the claimant's position that if there was any PAYE payable it would have been prudent for the Applicant to seek review to address the issue for the court to make the determination of the same. Mrs. Wachanga submitted that PAYE has come through a formula the claimant has not sat and agreed with the respondent. She asserts the PAYE is not agreed. She submitted that it was a lumpsum award and the PAYE cannot be deducted. The claimant submits that the Respondent cannot review, modify or substitute the judgment by using the Court of Appeal authority. Mrs. Wachanga submitted that the issue of interest also arises and that the amount on the judgment was paid in instalments staggered over 2 years, there was of course an element of interest. She submitted the judgment sum cannot remain the same as the payment of the judgment sum was staggered. She submits that the claimant had given a tabulation in the notice to show cause and the amounts due as interest accrued and balance given. She submitted that interest was not charged on the sum of 2 million paid but that interest was calculated on the period of non-payment which was 2 months. She asserts that there is no claim on interest for sums already paid. She submitted that the calculation was on a reducing balance basis. She submits there is an element of interest which is not paid. She submits the claimant had disputed the sums at the notice to show cause and the respondent was given a chance to tabulate what they had paid or not paid. She submits the respondent did not tabulate and never appeared before the Deputy Registrar and warrants were issued. She asserts the issue could have been settled before the Deputy Registrar and that the warrants were after the failure to pay. Mrs. Wachanga submitted that there is still a balance to be paid and that there is interest that is unpaid. She urged the motion to be disallowed.
4. In reprise, Mr. Thangei submitted that the issues raised before the Court could not be addressed and determined by the Deputy Registrar. He submitted that on the issue of interest, the claimant runs interest on the sum of 4,718,000/- which is the whole sum and then deduct sums paid. He submits that they have not taken the sum paid into account and that there was no need for parties to agree on the formula of tax to be applied as the same is set in statute. He asserts the tabulation was forwarded on October 28, 2022 and that the claimant confirmed that PAYE was payable. He submitted that the last payment was in July 2020.
5. The case of Kioko Joseph [suing as the representative of the estate of Joseph Kilinda] v Bamburi Cement Limited (supra) stated and settled what the law is. Section 49(2) of the *Employment Act* is clear. Any payments under that section are subject to statutory deductions. As such, there was to be statutory deduction on the sum awarded. The Respondent paid the sum through instalments and the sum therefore could not remain the exact same amount ordered by the court. The sum of Kshs. 2,000,000/- paid in August 2018 attracted interest by the time it was paid in August. A simple calculation of the interest at court rates is a sum of Kshs. 46,666.66. The balance of the decretal sum also attracted interest for as long as it remained unpaid. As such, the Respondent cannot assert full payment unless proper



calculation of the interest due is made. There is a sum due though the court is certain it may not extend to the sum of Kshs. 2,863,660.83 claimed in the warrants that were executed against the Respondent.

6. The court is minded to direct parties to appear before the registrar of this court for taking of accounts to ascertain with certainty the sums due and unpaid for purposes of final settlement of the claim. As the motion was urged robustly by the parties resulting in this decision, each party will bear their own costs for the same. Parties to appear before the Deputy Registrar of this court on July 31, 2023 to take accounts. Once the same is done, a date shall be taken for confirmation of payment before me in the new term.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JULY 2023

NZIOKI WA MAKAU

JUDGE

