



Ihonga v Mudete Factory Tea Growers Co Savings & Credit Ltd (Employment and Labour Relations Cause 26 of 2017) [2023] KEELRC 3147 (KLR) (30 November 2023) (Ruling)

Neutral citation: [2023] KEELRC 3147 (KLR)

KISUMU CAUSE NO. 321 OF 2017

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA

EMPLOYMENT AND LABOUR RELATIONS CAUSE 26 OF 2017

JW KELI, J

NOVEMBER 30, 2023

BETWEEN

BAHATI MWAMILI IHONGA APPLICANT

AND

MUDETE FACTORY TEA GROWERS CO SAVINGS & CREDIT LTD RESPONDENT

RULING

1. The Applicant was the Respondent in the suit. The Applicant after the judgment made payment vide cheque forwarded to the Claimant's advocates on the 26th August 2022 less statutory deductions. The Claimant in execution for the decree had the warrant of attachment dated 19th October 2023 taken out for the entire decretal sum. The Applicant then brought the instant application dated 1st November 2023 seeking the following reliefs:-
 - a. That this Application be certified as urgent and be heard exparte in the first instance and stay the execution of the warrants of attachment of movable property levied against the applicant by the proclamation made by M/S Armok Auctioneers on 19/10/2023.
 - b. That the warrant of attachment of movable property issued by this Honourable court on 19/10/2023 be set aside and or be reviewed.
 - c. That any other further orders be made as the honourable court may deem just and expedient.
 - d. That the costs of this application be provided for.
2. The application is based on the following principle grounds:-



- a. That the Applicant has paid to the Respondent the total sum of Kshs.865,472.89 having made statutory deductions as the practice in remittance of Pay As You Earn Regulations.
 - b. That the Applicant having settled the award and made deductions and forwarded the same to the Government there was no balance against which any interest would accrue.
 - c. That the only sum that the Applicant had not paid is the costs that were taxed at Kshs.251,315/- but this has since been settled.
 - d. That there is an error apparent on the face of the record in that when drawing the warrants of attachment dated 19/10/2023 the statutory deductions in the sum of Kshs.168,241,87 which had been paid by the Applicant to the Government had not been considered.
 - e. That the interest that was then calculated as a result in the sum of Kshs. 396,92.77 was clearly an error as it was based on the fact that payment of a sum of Kshs. 168.241.87, which had actually been remitted to the Government by the Applicant as a statutory deduction, had not been settled.
 - f. That this application is made in good faith and has merit.
3. This application is further supported by the affidavit of even date of Antony Vitinyu the CEO of the Applicant Credit Society which annexed the documents relied on.
 4. On 27th November 2023 when the Application came up for hearing, the Respondent told the court they had prepared their affidavit and required opportunity to file. Court gave 2 days for Respondent's to file reply and the parties were free to file submissions. No response was filed. The application was thus unopposed.
 5. I understood the dispute to be about the attempt to execute the warrant of attachment dated 19th October 2023 without factoring in the statutory deductions. On the 28th July, 2022 a decree of a total sum of Kshs. 865,472.89 was issued for the Claimant following judgement delivered on 13th May, 2020.
 6. The Claimant was a former employee of the Respondent and was awarded kshs.865,472 for unfair dismissal. The Respondent deducted statutory deductions of Kshs. 168,241.82 (Av 2 b) and paid the balance of decretal sum of Kshs. 697,231. The Respondent produced a letter dated 26th August, 2022 forwarding a cheque for sum of Kshs. 697,231/- to the Claimant's advocates. The Claimant has also paid the Advocates costs of Kshs.251,315.00 on 31st October, 2023 after the issuance of the warrant of attachment.
 7. Section 49 of the Employment Act provides:-' 49. Remedies for wrongful dismissal and unfair termination (1) Where in the opinion of a labour officer summary dismissal or termination of a contract of an employee is unjustified, the labour officer may recommend to the employer to pay to the employee any or all of the following — (a) the wages which the employee would have earned had the employee been given the period of notice to which he was entitled under this Act or his contract of service; (b) where dismissal terminates the contract before the completion of any service upon which the employee's wages became due, the proportion of the wage due for the period of time for which the employee has worked; and any other loss consequent upon the dismissal and arising between the date of dismissal and the date of expiry of the period of notice referred to in paragraph (a) which the employee would have been entitled to by virtue of the contract; or (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. (2) Any payments made by the employer under this section shall be subject to statutory deductions.'



8. The Claimant was awarded compensation for unfair dismissal in judgment dated 13th May 2020 under section 49 of the *Employment Act*. The employer was thus legally obliged to deduct statutory deductions on the award as it did.
9. I do find that the warrant of attachment dated 19th October, 2023 erroneously factored interest on the entire decretal sum which had been settled and failed to consider the statutory deductions.
10. For the foregoing reasons I hold the warrants of attachment dated 19th October 2023 in the suit were issued erroneously and set aside the same.
11. I allow the Application dated 1st November, 2023 and set aside the warrants of attachment of 19th October 2023.
12. No order as to costs.
13. It is so ordered.

DATED, SIGNED & DELIVERED IN OPEN COURT AT BUNGOMA THIS 30TH NOVEMBER 2023.

JEMIMAH KELI

JUDGE

In The Presence Of

Applicant: Isiaho h/b Mukavale

Respondent – Shifwoka

