



**Kaniu v Family Bank Limited (Cause E534 of 2022)
[2023] KEELRC 3060 (KLR) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3060 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E534 OF 2022
J RIKA, J
NOVEMBER 30, 2023**

BETWEEN

KENNETH KANIU CLAIMANT

AND

FAMILY BANK LIMITED RESPONDENT

RULING

1. The Claimant filed this Claim against 3 Respondents. The Claim against the 2nd and 3rd Respondents, Central Bank of Kenya and Capital Markets Authority respectively, was withdrawn through the consent of the Parties, recorded in Court on 3rd January 2023.
2. The remaining Parties named above, recorded a consent judgment in Court, dated 6th June 2023.
3. It was agreed that: -
 - a. The Respondent to pay the Claimant 6 months' salary as compensation for unlawful termination, amounting to Kshs. 10,200,000.
 - b. Each Party bears its own costs.
 - c. This matter is marked as settled with no order on the costs.
4. The Respondent paid to the Claimant Kshs. 7,145,216, making a P.A.Y.E tax deduction of Kshs. 3,054,783.
5. When the Parties appeared before the Court on 7th July 2023, they were therefore unable to have their consent adopted, as the full and final judgment of the Court.
6. Instead, the Court made the following orders: -
 - a. Judgment is entered partially, in favour of the Claimant.



- b. It is recorded that the Claimant has been paid by the Respondent Kshs. 7,145,217.
 - c. Parties shall file and exchange submissions on the balance reflected from the consent amount of Kshs. 10,200,000, stated to have been deducted as tax.
 - d. The Respondent to file an affidavit and submissions explaining the deduction within 14 days of today.
 - e. The Claimant to file an affidavit and submissions, justifying his claim to the full consent amount, within 14 days of service.
7. The Respondent filed an affidavit sworn by its Company Secretary and Chief Legal Officer Eric Murai on 21st July 2023, accompanied by submissions of even date, justifying deduction.
 8. The Claimant swore an affidavit on 31st July 2023 objecting to deduction. He filed submissions dated 4th August 2023, expounding his objection.
 9. The Respondent relies on Court of Appeal of Kenya decision in [*Kioko Joseph \[suing as the Legal Representative of the estate of Joseph Kilinda\] v. Bamburi Cement Limited*](#) [2017] e-KLR; and E&LRC decisions in [*DPL festive v. Elijah Ochieng' Rakuru*](#) [2022] e-KLR; [*Hosea Njeru Kagondu v. Kenya Union of Commercial, Food and Allied Workers*](#) [2012] e-KLR; and, [*Galgalo Jarso Jillo v. Agricultural Finance Corporation*](#) [2021] e-KLR, in urging the Court to uphold the proposition, that Section 49 [2] of the [*Employment Act*](#) requires every award of the Court, made pursuant to the Section, subject to statutory deductions.
 10. The Claimant submits that he is entitled to the full consent judgment amount, not a tittle or jot less. It is submitted for the Claimant that the consent executed by the Parties, was a binding contract. Parties intended to create a legal relationship. A consent order or judgment has contractual effect. It can only be varied on the grounds that a contract can be varied: fraud; collusion; illegality; mistake; being contrary to the policy of the Court; absence of sufficient material facts; and ignorance of material facts. The Claimant anchors these submissions on the following judicial authorities: [*S.M.N v. Z.M.S. & 3 others*](#) [2017] e-KLR; [*National Bank of Kenya v. Pipe Plastics Sankolot \[K\] Limited and Another*](#) [2001] e-KLR; and [*Mumias Sugar Co. Limited & Another v. Beatrice Akinyi Omondi*](#) [2016] e-KLR.

The Court Finds: -

11. There are 2 leading decisions from the Court of Appeal of Kenya on the subject.
12. In [*Kioko Joseph \[suing as the Legal Representative of the estate of Joseph Kilinda\] v. Bamburi Cement Limited*](#) [2017] e-KLR, the Court of Appeal held that an Employer has an obligation to recover the appropriate tax from any lump sum amount payable to an Employee; and liability for taxation extends to any payment, whether voluntary or obligatory, made to a person, to compensate him for termination of his employment or services.
13. The Court of Appeal made reference to Sections 3[1], 3[2] [a], 5[2] and 37[1] of the [*Income Tax Act*](#); Sections 19 [1] [f] and 49 [2] of the [*Employment Act*](#); and the Kenya Revenue Authority Employer's Guide on P.A.Y.E, in reaching at the above holding.
14. The second decision is [*Andrew Mukite Saisi v. Tracker Group of Companies Limited*](#) [2020] e-KLR. Here, the Court of Appeal stated that "It therefore follows that even though Judgment entered between the Parties did not make provision, in express terms, for the payment of tax, any amount that was paid to the Appellant was therefore subject to taxation. The Appellant's complaint that this would amount to variation of the consent judgment, is therefore baseless, and this ground fails."



15. The Court is bound by the 2 decisions of the Court of Appeal above, and rejects the Claimant's protestation on deduction of P.A.Y.E tax. The position of the Respondent is upheld, with the effect that the Court enters full and final judgment in favour of the Claimant as follows: -
- a. The Respondent has paid to the Claimant 6 months' salary as compensation for unlawful termination amounting to Kshs. 10,200,000.
 - b. The said amount has been subjected to P.A.Y.E tax deduction in the amount of Kshs. 3,054,783, with the net amount paid to the Claimant at Kshs. 7,145,216.
 - c. The Claim is marked as fully settled, with each Party to bear its own costs.
 - d. The file is closed.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 30TH DAY OF NOVEMBER 2023.

JAMES RIKA

JUDGE

