



**Mudongoi v Mudete Factory Tea Growers Cooperative Savings and Credit Society (Employment and Labour Relations Cause 27 of 2017)
[2023] KEELRC 3145 (KLR) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3145 (KLR)

KISUMU CAUSE NO. 230 OF 2017

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA

EMPLOYMENT AND LABOUR RELATIONS CAUSE 27 OF 2017

JW KELI, J

NOVEMBER 30, 2023

BETWEEN

JOYVET MINAYO MUDONGOI CLAIMANT

AND

MUDETE FACTORY TEA GROWERS COOPERATIVE SAVINGS AND CREDIT SOCIETY 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 *vide* letter dated 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 urgent and be heard *ex parte* in the first instance staying the execution of the warrant of attachment of movable property of the applicant and the Honourable Court be pleased to fix the application for hearing inter-parties.
 - b. That the decree issued herein and the warrant of attachment of movable property in execution herein as against the applicant be set aside and or reviewed.
 - c. That any order further orders be made as the honourable court may deem just and expedient.
 - d. That the costs of this application be proved for.
2. The application is based on the following principle grounds:-



- a. That the Applicant has paid to the Respondent a total sum of ksh 343,094.53 (having made statutory deductions as directed by this honourable court on 28/7/2022).
 - b. That the Applicant having settled the award as made by the Honorable court there was no balance against which any interest would accrue.
 - c. That the only sums that the Applicant had not paid at the time of execution are the costs as taxed at ksh 191,315/-. Which has now been paid.
 - d. That there is, therefore, an error apparent on the face of the record in that when drawing the warrants of attachment dated 19/10/2013 the statutory deductions which had been made by the applicant to the Government in the sum of ksh 13,773.63 as directed by this Honourable court was not taken into consideration.
 - e. That the interest that was then calculated as a result in the sum of ksh 68,618/- is clearly an error and not payable to the Respondent in respect of this decree as the ksh 13,773.63/- was truly not outstanding .
 - f. That this application is made in good faith
3. The application is further supported by the affidavit of Antony Vitinyu the CEO of the Applicant Credit Society of even date.
 4. On 27th November 2023 when Application came up for hearing, the Respondent told the court they had prepared their affidavit and required opportunity to file. The Court gave the Respondent 2 days for the affidavit to be filed 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 warrant of attachment of court dated 19th October 2023 for the full decretal amount without factoring the statutory deductions. On the 28th July, 2022 decree of total sum of ksh 343,094.53/- was issued for the Claimant following judgement delivered in his favour.
 6. The Claimant was a former employee of the Applicant and was awarded ksh 343,094.53/- as compensation for unfair dismissal. The Respondent deducted statutory deductions of ksh 13,773.63 (Av 3a and 3b) and paid balance of decretal sum of ksh 329,321/--(Av2) The Respondent *vide* letter dated 26th August, 2022 forwarded the cheque for that amount to the Claimant's advocates. The Claimant has also paid the Advocates costs of ksh 191,315/- on 31st October, 2023. This was 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 constructive dismissal in judgment dated 28th July 2022 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 execution of attachment and Application for execution decree dated 19th October, 2023 was erroneously awarded interest on the decree money which had been settled and failed to consider the statutory deductions.
10. For the foregoing reasons I hold warrants of attachment 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 – Isaiho h/b Mukavale

Respondent – Shifwoka

