



**Kisilu v Astrazeneca Pharmaceuticals Limited (Cause 1981 of 2016)
[2022] KEELRC 1420 (KLR) (30 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1420 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1981 OF 2016
MN NDUMA, J
JUNE 30, 2022**

BETWEEN

PAUL NGEI KISILU CLAIMANT

AND

ASTRAZENECA PHARMACEUTICALS LIMITED RESPONDENT

RULING

1. The suit was heard and determined by Hon Lady Justice Christine W Baari vide a judgment delivered on November 11, 2021 for a total amount of Kshs 6,672,731.91 plus costs and interest from the date of the judgment till payment in full.
2. Following the judgment, the counsel for the judgment debtor and counsel for the claimants filed before court a consent dated December 6, 2021 in terms of which the parties agreed on costs payable in the sum of Kshs 550,000.
3. The applicant states they then proceeded to pay the entire decretal sum which reflected on the claimant's advocates' account on December 15, 2021.
4. The application is premised on the grounds set out on the face of the notice of motion to wit; that despite the filing of the consent dated December 6, 2021 and verbal undertaking by counsel for the claimant that they would not proceed with execution on December 10, 2021 the respondent was served with warrant of attachment dated December 10, 2021 and a proclamation notice dated December 10, 2021.
5. That as of that date, the respondent had already initiated payment of the decretal sum less PAYE tax and the costs as agreed by the parties which payment reflected on the claimant's advocates accounts on December 15, 2021.



6. That the auctioneers, are intent on carrying out the execution as per the warrants on the false assertion that the respondent was not entitled to deduct PAYE tax from the decretal amount.
7. The claimant/respondent filed grounds of opposition to the application to wit that the application offends the provisions of rule 28 of [Employment and Labour Relations Court\(procedure\) Rules, 2016](#).
8. That the applicant did not file an appeal and or seek review of the judgment of the court and it is not within the purview of the applicant to unilaterally review the judgment and decree of the court.
9. That the applicant has refused, failed and/or neglected to satisfy the judgment and decree of the court and therefore the firm of Bemac Auctioneers should be allowed to proceed and recover the full decretal sum as ordered by the court.
10. That the court is now *functus officio* on the matter and the claimant should be allowed to execute for payment of the full decretal amount as ordered and therefore the interim orders granted to the judgment debtor are unmerited and should be vacated.
11. The parties filed written submissions which the court has carefully considered together with the depositions by the applicant and in the absence of a replying affidavit by the claimant/respondent having instead filed grounds of opposition on matters of law only
12. In view of that the court finds that the parties indeed filed a consent on the costs of the suit dated December 6, 2021 assessed at Kshs 550,000 and that on December 15, 2021, the applicant paid the full decretal amount less pay as you earn (PAYE) tax for onward transmission to Kenya revenue authority.
13. That the process to execute the judgment and decree of the court is based on the objection by the claimant for the deduction of pay as you earn by the applicant stating that that particular issue was not part of the judgment of the court.
14. The court has carefully examined the judgment of Honourable Christine N Baari dated November 11, 2021 in which the court entered judgment in the following terms:-
 - (i) A declaration that the dismissal of the claimant is wrongful and unfair,
 - (ii) Payment of 12 months' salary equivalent in compensation for unfair dismissal at Kshs 6,159,444.84.
 - (iii) One-month salary in lieu of notice at Kshs 513,287.07.
 - (iv) Costs of the suit and interest at court rates until payment in full.
15. The Court of Appeal in [Kioko Joseph \(suing as the Legal representative of the Estate of Joseph Kilinda\) v Bamburi Cement Limited](#) [2017] eKLR held as follows:-

section 19(1) of the [Employment Act](#) allows an employer to make deductions which are authorized by any written law from an employee's salary. The authorized deductions include statutory deductions and damages issued for wrongful termination as envisioned under section 49 of the [Employment Act](#).”
16. This is the position I have taken in various decisions and is in my view a very sound, fair and just legal position, upholding the rights of an employee while protecting the employer's obligations to the state.
17. Therefore, a judgment that awards compensation to an employee for unlawful dismissal impliedly also allows payment of PAYE on the decretal amount. It would be elegant for the court to state so always



in the judgment but section 49(1) (2) is clear and unequivocal on the matter of payment of taxes in respect of any compensation and terminal benefits paid in terms of section 49 of the Act as follows:-

“(2) Any payments made by an employer under this section shall be subject to statutory deductions.”

18. Accordingly, the application is meritorious and is granted with costs. The applicant should not be visited with any costs of the misguided attachment and proclamation at all.

19. It is so ordered.

Dated and delivered at Nairobi (virtually) this 30th day of June, 2022

MATHEWS N. NDUMA

JUDGE

Appearances

M/S Onyango for Respondent/Applicant

Ashrumna for claimant/Respondent

Ekale – Court Assistant

