



**Ogwang v Equator Bottlers Limited (Cause 19 of 2020)
[2022] KEELRC 13003 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13003 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 19 OF 2020
CN BAARI, J
OCTOBER 27, 2022**

BETWEEN

CLAY ONYANGO OGWANG CLAIMANT

AND

EQUATOR BOTTTLERS LIMITED RESPONDENT

RULING

1. Before court are applications dated 3rd August, 2022, and 22nd July, 2022. The application of 3rd August, 2022, seeks review of the orders issued by this court on 1st August, 2022 in the matter or in the alternative, an order for payment of Auctioneers fees and costs.
2. In the application of 22nd July, 2022, the Applicant/Respondent seeks that she is allowed to liquidated the judgment sum of Kshs. 560,000/- plus interest thereon, in two monthly instalments of Kshs. 263,279/-.
3. The application of 22nd July, 2022, was listed for hearing on 5th October, 2022, when Counsel for the Claimant sought to consolidate the two applications. The Counsel for the Respondent indicated that she was not opposed to the consolidation, following which, the court consolidated the two applications.
4. The Respondent/Applicant argued that some of the issues subject of the application were overtaken by events on the basis that the calculations were inclusive of the decretal sum, costs of the suit and Auctioneer's fees. It is the Respondent's further argument that the Auctioneer's fees has since been paid and the Claimant has filed a Bill of costs that is currently pending for ruling, leaving the decretal sum as the only pending issue.
5. It is the Respondent's position that the decretal sum of Kshs. 560,000/-, was awarded as compensation for unfair termination in accordance with Section 49 of the *Employment Act*, and which sum is subject to statutory deductions.



6. The Respondent submitted that she is ready and willing to release the decretal sum less statutory deductions.
7. The Claimant submitted that the application of 3rd August, 2022, sought payment of Auctioneer's fee, and which fee has since been paid, hence the application is spent.
8. The Claimant further argues that the Respondent having indicated that they have no objection to the release of the decretal, the total sum should be released without subjecting the same to statutory deduction.
9. It is the Claimant's submission that the amount in issue is compensation and not salary, and hence is not subject to statutory deductions.

Determination

10. I have considered the applications, the grounds and affidavits in support thereof, the replying affidavit in opposition and the oral submissions by counsels for both parties. Parties have largely agreed on the issues subject of the applications, and by which agreement the application of 3rd August, 2022, is spent in its entirety, leaving nothing for the court to decide.
11. The only remaining issue for my determination, is whether compensation awarded under Section 49 of the *Employment Act*, is subject to statutory deductions.
12. Section 49 of the *Employment Act*, 2007, states: -
 - “(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.”
13. By virtue of Section 49(2) of the Act, statutory deductions are applicable to all payments the employer is required to make arising from a court award irrespective of whether the payment is in relation to salaries or compensation. In *Hosea Njeru Kagundu v Kenya Union of Commercial Food and Allied*



Workers (2012) eKLR, the Court held that all payments due under Section 49 of the Employment Act, are subject to Statutory deductions.

14. I find and hold that all awards made pursuant to Section 49 of the Employment Act, 2007, are subject to statutory deductions, and the court does not have the latitude to subject some awards to statutory deductions and leave out others.
15. In sum, the Respondent is hereby ordered to release the decretal sum of Kshs. 560,000/- to the Claimant, less statutory deductions.
16. It is so ordered.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 27TH DAY OF OCTOBER, 2022.

CHRISTINE N. BAARI

JUDGE.

Appearance:

Ms. Nekesa h/b for Mr. Wathuta for the Respondent/Applicant

Mr. Clay Onyango Ogwang Claimant present in person

Ms. Christine Omollo-C/A

