



**Mwacho v Sunflag Textile & Knit Wear Mills Limited (Cause  
1890 of 2015) [2022] KEELRC 14663 (KLR) (6 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 14663 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1890 OF 2015  
M MBARŪ, J  
OCTOBER 6, 2022**

**BETWEEN**

**ENOCK MWACHO ..... CLAIMANT**

**AND**

**SUNFLAG TEXTILE & KNIT WEAR MILLS LIMITED ..... RESPONDENT**

**RULING**

- 1 The respondent, Sunflag Textile & Knitwear Mills Limited filed application dated August 1, 2022 seeking for orders that the claimant be restrained from attaching the respondent's property until the respondent's party and party bill of costs is taxed and that the claimant's due be deducted from the respondent's costs herein after taxation of the respondent's party and party bill of costs.
- 2 The application is supported by the affidavit of Ateko Ivy Ingati advocate and on the grounds that judgement herein was delivered on June 6, 2022 in favour of the respondent with costs. The claimant was directed to collect his terminal dues amounting to Ksh 23,000. The party and party bill of costs is before the Deputy Registrar for taxation and the claimant has no known financial ability that he will be able to pay costs due to the respondent upon collection of his terminal dues.
- 3 The claimant did not attend or respond to the instant application. Determination In the judgement of the court delivered on June 6, 2022 the suit was dismissed with costs to the respondent save the claimant was directed to collect his terminal dues owing from the respondent. such dues are stated to be Ksh 23,000. These facts are not contested.
- 4 There is a valid judgement of the court and since, the Deputy Registrar has taxed the Party and Party Bill of Costs.
- 5 Section 17(6) and (7) of the *Employment Act, 2007* allow an employee to be paid his dues by the employer;



6. Notwithstanding the provisions of any law for the time being in force, whenever an attachment has been issued against the property of an employer in execution of a decree against him, the proceeds realised in pursuance of that execution shall not be paid by the court to a decree- holder until a decree obtained against the employer in respect of the wages of employees has been satisfied to the extent of a sum not exceeding six months' wages of those employees.
7. Nothing in subsection (6) shall prevent an employee from recovering any balance due after such satisfaction, by ordinary process of law.
8. Upon this right to be paid owed dues, an employer is allowed to deduct from an employee wages any monies owed following a Court Order such as herein pursuant to the provisions of Section 19(1)(f) of the *Employment Act, 2007*;
- (1) Notwithstanding section 17(1), an employer may deduct from the// wages of his employee
  - (f) any amount the deduction of which is authorised by any written law for the time being in force, collective agreement, wage determination, court order or arbitration award;
9. on this basis, the judgement herein put into account, the respondent is justified to make a deduction of the owed terminal dues from the costs awarded, whichever is higher.
10. Accordingly, application dated August 1, 2022 is hereby allowed to the extent that the claimant's terminal dues of Ksh 23,000 shall be paid less what he owes the respondent in costs whichever is higher. Execution shall therefore not issue unless the claimant has paid what he owes the respondent in costs.

Each party shall bear own costs.

Delivered in court at Nairobi this 6<sup>th</sup> day of October, 2022.

M. MBARÚ JUDGE

In the presence of:

Court Assistant: Okodoi

..... and .....

