



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CASE NO. 211 OF 2017

(As consolidated with ELRC causes No. 221 and 222 of 2017)

DORIS KAIRUTHI KAARIA & 59 OTHERS.....CLAIMANT

VERSUS

B.O.M KAHITHE SECONDARY SCHOOL.....1<sup>ST</sup> RESPONDENT

TEACHERS SERVICE COMMISSION.....2<sup>ND</sup> RESPONDENT

RULING

1. The only issue the Court can properly make a Ruling on is the issue of tax payable in decrees. It is the Respondent's position that there is tax due and PAYE payable on account of the *decree* now held by the Claimants. The Claimants on their part assert that the tax is not payable on a decree and cite the provisions of the *Income Tax Act* as well as *Section 19(1)* of the Employment Act which is specifically a finding in the case of **Joseph Murabu v K-Rep Bank Ltd (2017) eKLR** a decision by Nduma Nderi J. The 2 parties therefore have a diverged position on the payment of taxes due.

2. In regard to the other deductions, the Respondent asserts there are dues that it is entitled to being fees, advances and imprests by the individuals who owed the Respondent some money. The Claimants oppose these deductions arguing that no counter claim was mounted. As regards the last issue a liquidation by instalment the Claimants did not give any response to the request to liquidate the sum by payment of the sum of 5 million each month till payment in full.

3. The Employment Act makes provision under *Section 49 (2)* of the said Act for payment of statutory deductions for any payment made pursuant to this Section. The consent entered into by parties did not make provision on the taxes due. However the Judgment of the Court given in July 2017 made provision of payment of compensation in terms of *Section 49(1)(c)* which clearly places the sums due as a decree of Court within the provisions of the tax element in *Section 49(2)*. The *Income Tax Act* preceded the *Employment Act 2007* and is amended accordingly by this Act in line with the principles of statutory interpretation relating to a subsequent legislation affecting a statutory provision that is new.

The final point on payment by instalments is a matter the Court will leave to parties to agree on after the taxes are deducted from the global sum due. A certificate from KRA on the remittance of the taxes must be presented to Court within 30 days of today. No applications may be made without leave of Court first being obtained. Should any party wish to appeal this decision they have 14 days to do so.

It is so ordered.

Dated and delivered at Nyeri this 17<sup>th</sup> day of January 2019

Nzioki wa Makau

JUDGE

I certify that this is a true

copy of the original

DEPUTY REGISTRAR