



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 985 OF 2014

GRACE AKINYI AHAWO.....CLAIMANT

VERSUS

KENYA AIRPORT AUTHORITY.....RESPONDENT

RULING NO. 2

1. In a judgment delivered on 21 May 2018, the Court entered judgment in favour of the Claimant, and awarded her Kshs 230,400/-, being the equivalent of 3 months' pay in lieu of notice; Kshs 460,800/- being 6 months' salary as compensation and costs of the suit.

2. The decree issued by the Court indicated the decretal sum as Kshs 730,285/94, while costs were taxed as Kshs 157,647/-.

3. When settling the decretal sum, the Respondent paid to the Claimant's advocate Kshs 625,655/-, and withheld the balances on account of tax.

4. The Respondent, it appears treated the decretal sum as legal fees, hence the withholding of the tax element.

5. Attempts by the Claimant's advocate to resolve the deductions with the Respondent did not succeed, and on 20 February 2019, the Claimant moved the Court seeking orders

1. ...

2. **THAT** the Honourable Court do issue an order directed at the Managing Director of the Respondent to settle the balance of the decretal sum being Kshs 262,277.

3. **THAT** this Honourable Court do issue an order directing the Respondent to cancel KRA withholding Certificate Nos. KRAWHTWON0025310619 and KRAWHTWON00033261319 for Kshs 29,794 and Kshs 35,752 respectively which were erroneously withheld.

6. The Respondent filed *grounds of opposition* to the application on 5 March 2019, and the parties addressed the Court on the same day.

7. The Court has considered the application, the grounds and supporting affidavit in support, the Respondent's *grounds of opposition* and the oral submissions made in Court.

8. The Respondent, in opposing contended that the motion was an *execution application* which did not meet and comply with the requirements of Rule 32(2) of the Employment and Labour Relations Court (Procedure), Rules 2016, and Order 22 of the Civil Procedure Rules.

9. Despite challenging the *competence* of the application, the Respondent admitted during the submissions that there was an error when it made payments to the Claimant's advocate, and sought for time to rectify the error.

10. There being no dispute that the Respondent made an error when it purported to deduct withholding tax on the decretal sum on the supposition that the same was legal fees, the Court has no option but to allow the application.

11. However, the parties did not address the Court on whether the Respondent has the legal *competence* to cancel a withholding certificate, and therefore in lieu of the orders in the application, the Court will order that

(i) The Respondent do rectify the error it made and settle the balances of the decretal sum or such due sum after reconciliation, within 30 days.

12. Claimant to have costs.

Delivered, dated and signed in Nairobi on this 9th day of April 2019.

Radido Stephen

Judge

Appearances

For Claimant Mr. Ojienda instructed by Ojienda & Co. Advocates

For Respondent Ms. Kanyiri, instructed by the Federation of Kenya Employers

Court Assistant Lindsey