

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 176^N OF 2009

PERIS NJERI KINYANJUI.....CLAIMANTS

VERUS

KOBO SAFARIS LIMITED.....RESPONDENT

Mr. Ohenga for respondent/applicant

M/S Kang'ethe for claimant/respondent

RULING

1. Issue in dispute is whether or not an employer is entitled to withhold tax Pay As You Earn (PAYE) on an award of compensation in terms of Section 49 (1) (c) of the Employment Act, No. 11 of 2007.

Section 49 (2) provides:

“Any payments made by the employer under this Section shall be subject to statutory deductions.”

2. Tax deductions, including PAYE are statutory deductions within the meaning of subsection (2) above.

The compensation awarded under Section 49 (1) (c) is *“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.”*

3. The Act is explicit that any such payment is subject to statutory deductions and the applicant was entitled to deduct, and remit the amount deducted to the Kenya Revenue Authority.

4. Accordingly, the claimant/respondent was wrong to threaten, as it did to proclaim and attach the property of the applicant in respect of the withheld amount. The same should be refunded to the applicant and/or remitted directly to the Kenya Revenue Authority forthwith.

Dated and delivered at Nairobi this 10th day of February 2017

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE