



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO.224 OF 2013**

**SIMON KAGIRI NDIRANGU.....CLAIMANT**

**VERSUS**

**SIGONA GOLF LIMITED..... RESPONDENT**

**RULING**

The claimant, by application and Notice of Motion dated 5<sup>th</sup> April, 2017 is seeking for orders that there be a declaratory order herein as the suit is compromised upon the parties having agreed to the settlement of the same in that;

- a) The respondent to pay the sum of Kshs.618, 262/= all inclusive to the claimant/applicant herein in full and in final settlement hereof.*
- b) The respondent to provide to the claimant/applicant herein, the original receipt for the sum of Kshs.54, 053/= deposited by the respondent with the concerned District Labour Officer with the aid deposited monies to be released to the claimant/applicant herein.*
- c) The respondent to further provide to the claimant herein, proof of payment of the sum of Kshs.220, 853/= as lawful deductions by the respondent.*

The claimant is also seeking for orders that the judgement be entered herein for the claimant against the respondent for the above stated amounts. The respondent has paid the sum of Kshs.456, 851.30 to the claimant leaving a balance of Kshs.161, 410.70.

The application is supported by the affidavit of the claimant and on the grounds that the suit herein has been compromised and agreement made to pay the claimant a sum of Kshs.618, 262.00 all inclusive. On the agreed amount, the respondent paid Kshs.456, 851.30 leaving a balance of Kshs.161, 410.70 which the respondent insists that it comprises of statutory deductions on the settlement amounts.

The agreement between the parties did not provide for statutory deductions by the respondent's advocates and the respondent was not at liberty to unilaterally make such deductions without agreement with the claimant. Thus the orders sought should issue.

The respondent filed Grounds of Opposition to the claimant's application and on the grounds that the application filed by the claimant is vexatious and should be dismissed. The orders sought are not part of the claims made by the claimant in the statement of claim and the main suit cannot be settled by way of application. A consent compromising the suit should be filed so as to have the matter was settled.

The orders sought for the claimant to be paid the statutory deduction are contrary to law and cannot issue.

The court directed parties to file written submissions. Only the claimant filed written submissions.

## **Determination**

Taking into account the application dated 4<sup>th</sup> of May, 2017 and the Grounds in opposition filed by the respondent and the submissions filed by the claimant, I note the application by the claimant is premised on an agreement between the parties to compromise the suit by the claimant being paid the sum of Kshs.618, 262.00 and which amount included the sum of kshs.54, 053.00 deposited by the respondent with the Labour Officer.

The agreement in compromise of the suit is not filed. Where a suit is compromised by agreement between the parties, the same should be filed for it to be adopted by the court as an order.

Even where parties have not filed consent to settle and or compromise the suit and there is an agreement to pay any employment dues, the law is clear to the extent that all and or any payments made by the employer to the employee should be paid less statutory deductions. Section 49(2) of the Employment Act, 2007 provides as follows;

*s.49 (2) any payments made by the employer under this section shall be subject to statutory deductions.*

Statutory deductions are lawful under the provisions of section 49(2) read together with section 19 of the Employment Act, 2007. Section 19(1) (f) provides as follows;

*(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;*

As such, where the claimant was entitled to terminal dues payable by the employer, such were subject to statutory deductions under the provisions of the Kenya Revenue Authority Act. To make such deductions is lawful and the same cannot be advanced to the claimant as an employee of former employee of the respondent as such action would be unlawful for the respondent to undertake. A sanction is due for non-compliance in effecting statutory deductions.

Where the respondent has made any deductions from the dues owing to the claimant as an employee or former employee, the claimant is entitled to a full statement settling out such deductions.

Section 19 (4), (5) and (6) of the Employment Act, 2007 thus provides as follows;

*(4) An employer who deducts an amount from an employee's remuneration in accordance with subsection (1)(a), (f), (g) and (h) shall pay the amount so deducted in accordance with the time period and other requirements specified in the law, agreement court order or arbitration as the case may be.*

*(5) An employer who fails to comply with the provisions of subsection (4) commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both.*

*(6) Where proceedings are brought under subsection (5) in respect of failure by the employer to remit deductions from an employee's remuneration, the court may, in addition to fining the employer order the employer to refund to the employee the amount deducted from the employee's wages and pay the intended beneficiary on behalf of the employee with the employer's own funds.*

Noting the above, the respondent shall provide the claimant with a statement of the payments made in compliance with sections 19 and 20 of the Employment Act, 2007. Where such statement is found not sufficient to address the statutory deductions made in terms of the paid amounts owing to the claimant, the claimant shall be at liberty to move the court as appropriate.

Application dated 4<sup>th</sup> May, 2017 is hereby declined. Costs in the cause.

**Dated and delivered in open court at Nairobi this 20<sup>th</sup> day of July, 2017.**

**M. MBARU**

**JUDGE**

In the presence of:

Lilian Njenga and David Muturi – Court Assistants

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