



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS**

**COURT OF KENYA AT NAIROBI**

**CAUSE NO. 1615 OF 2011**

**LOUISE W. MUIRURI.....CLAIMANT**

**VERSUS**

**PARAMOUNT UNIVERSAL BANK LIMITED.....RESPONDENT**

**RULING**

1. There are two applications pending for determination. One is the Claimant's review application dated 26<sup>th</sup> January 2016 seeking a review of the decision of the judgment of the Court dated 10<sup>th</sup> November 2015 on whether the award given of Kshs. 120,000 is subject to PAYE/tax. The Claimant also sought that costs of the motion be provided for. The grounds on the motion and the annexed affidavit sworn in support of the motion were that the Claimant's award of Kshs. 120,000/- as compensation had been subjected to tax and PAYE and that this had highly prejudiced the Claimant as she was deprived of Kshs. 70,659 which the Claimant had been awarded in the judgment.

2. The Respondent on its part filed an application an application dated 26<sup>th</sup> January 2016 on 3<sup>rd</sup> February 2016 in which the Respondent sought the grant of orders for deposit of Kshs. 49,341/- which had been awarded to the Claimant and that the Respondent be discharged from being indebted to the Claimant. The ground on the motion was that in compliance with the judgment delivered by the Court the sum of Kshs. 49,341/- was tendered to the Claimant and rejected. The affidavit of Timothy Kimani was sworn in support of the motion and the affidavit showed the computation of the sums due to the Claimant and subject to tax and statutory deductions.

3. The parties opted to have the motions disposed off by way of written submissions and the only submissions filed where by the Claimant. In her submissions filed on 18<sup>th</sup> July 2016, the Claimant submits that the award of compensation was distinct from the amounts sought as notice period, leave dues and pay for days worked which ate ordinarily subject to PAYE. It was her contention that to subject the sum awarded in compensation to tax was detrimental to her case and the Court ought not to countenance the Respondent's mischief in attempting to get away from paying the said award after the Claimant's unfair dismissal. The Claimant thus sought clarification on the issue as to whether the compensation is subject to tax (PAYE).

4. The two applications can be dealt with together as they both seek to establish if an award of the Court on compensation is subject to statutory deduction and tax or PAYE as it is known. The Court, in a judgment delivered on 10<sup>th</sup> November 2015 awarded the Claimant Kshs. 40,000/- as notice, Kshs. 16,000/- for days worked in July 2011, Kshs. 29,333.33 being leave dues, Kshs. 120,000/- as compensation and ordered that the sums be subject to statutory deductions in terms of Section 49 of the

Employment Act. I also entered judgment for the Respondent against the Claimant for Kshs. 100,000/- and the sum was to be netted off the payment due to the Claimant and each party was to bear their own costs. Sections 49 and 50 of the Employment Act provide as follows:-

*49. (1) Where in the opinion of a labour officer summary dismissal or termination of a contract of an employee is unjustified, the labour officer may recommend to the employer to pay to the employee any or all of the following—*

*(a) the wages which the employee would have earned had the employee been given the period of notice to which he was entitled under this Act or his contract of service;*

*(b) where dismissal terminates the contract before the completion of any service upon which the employee's wages became due, the proportion of the wage due for the period of time for which the employee has worked; and any other loss consequent upon the dismissal and arising between the date of dismissal and the date of expiry of the period of notice referred to in paragraph (a) which the employee would have been entitled to by virtue of the contract; or*

*(c) 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.*

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

*(3) Where in the opinion of a labour officer an employee's summary dismissal or termination of employment was unfair, the labour officer may recommend to the employer to—*

*(a) reinstate the employee and treat the employee in all respects as if the employee's employment had not been terminated; or*

*(b) re-engage the employee in work comparable to that in which the employee was employed prior to his dismissal, or other reasonably suitable work, at the same wage.*

*(4) A labour officer shall, in deciding whether to recommend the remedies specified in subsections (1) and (3), take into account any or all of the following—*

*(a) the wishes of the employee;*

*(b) the circumstances in which the termination took place, including the extent, if any, to which the employee caused or contributed to the termination; and*

*(c) the practicability of recommending reinstatement or re-engagement;*

*(d) the common law principle that there should be no order for specific performance in a contract for service except in very exceptional circumstances;*

*(e) the employee's length of service with the employer;*

*(f) the reasonable expectation of the employee as to the length of time for which his employment with that employer might have continued but for the termination;*

*(g) the opportunities available to the employee for securing comparable or suitable employment with another employer; (h) the value of any severance payable by law;*

*(i) the right to press claims or any unpaid wages, expenses or other claims owing to the employee;*

*(j) any expenses reasonably incurred by the employee as a consequence of the termination;*

*(k) any conduct of the employee which to any extent caused or contributed to the termination;*

*(l) any failure by the employee to reasonably mitigate the losses attributable to the unjustified termination; and*

*(m) any compensation, including ex gratia payment, in respect of termination of employment paid by the employer and received by the employee.*

*50. In determining a complaint or suit under this Act involving wrongful dismissal or unfair termination of the employment of an employee, the Industrial Court shall be guided by the provisions of section 49.*

5. The remedies for wrongful dismissal and unfair termination are set out in the law. The law is clear. Any payments made by the employer under Section 49 shall be subject to statutory deductions and further, in determining a complaint or suit under this Act involving wrongful dismissal or unfair termination of the employment of an employee, the Industrial Court shall be guided by the provisions of section 49. In determining the cause before the Court, Section 49 as read with Section 50 was applied. The express provision of the law is that the compensation which falls under Section 49(1)(c) of the Employment Act is subject to statutory deductions. Section 19(1)(f) of the Employment Act makes provision that the employer may deduct from the employee's salary 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. That in short is what the statutory deduction entails. In the premises, the motion for review is misplaced and the proper course is to subject the sums due to statutory deduction. The sum of Kshs. 49,341/- is what is due to the Claimant in terms of the award made in the judgment of the Court. On payment of the sum to the Claimant the Respondent will stand discharged of the decretal sum due to the Claimant. Parties are to bear their own costs for the applications herein.

Orders accordingly.

**Dated and delivered at Nairobi this 25<sup>th</sup> day of July 2016**

**Nzioki wa Makau**

**JUDGE**