



**REPUBLIC OF KENYA**

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

**CAUSE NO 263 OF 2013**

**MARGARET AUMA INGWE.....CLAIMANT**

**VS**

**KENYA POWER AND LIGHTING COMPANY LIMITED.....RESPONDENT**

**RULING**

1. By a ruling of the Court delivered on 30<sup>th</sup> September 2015, I awarded the Claimant the sum of Kshs. 1,077,216 less a counterclaim amount of Kshs. 642,618 leaving a balance of Kshs. 434,598.
2. Subsequently the Respondent deducted the sum of Kshs. 130,379.40 being 30% statutory tax bringing the final decretal sum to Kshs. 304,218.60 which was paid to the Claimant on 29<sup>th</sup> October 2015.
3. It would appear that the Claimant was dissatisfied with the Respondent's action as she continued pursuing the amount deducted as tax, culminating with an attachment of the Respondent's motor vehicle.
4. This prompted the Respondent to move to Court by way of Notice of Motion dated 29<sup>th</sup> February 2016 seeking the following orders:
  - a) That the warrants of attachment issued on 22<sup>nd</sup> February 2016 and all consequential orders be declared as irregular and an abuse of the court execution process;
  - b) That the decretal sum awarded to the Claimant on 30<sup>th</sup> September 2015 be declared as duly paid and settled on 29<sup>th</sup> October 2015;
  - c) That the costs incurred by UpState Auctioneers in the proclamation of the Respondent's property be borne by the Claimant;
  - d) That the costs of the application be awarded to the Respondent.
5. The application which is supported by the affidavit of the Respondent's Legal Officer, Emily Kirui is based on the following grounds:
  - a) That the ruling delivered on 30<sup>th</sup> September 2015 awarded the Claimant the sum of Kshs. 1,077,216 less the counterclaim sum of Kshs. 642,618 leaving a balance of Kshs. 434,598;
  - b) That the said sum of Kshs. 434,598 was to be subjected to statutory deduction of PAYE at 30% (Kshs. 130,218.60) as per Section 49(2) of the Employment Act, 2007 bringing the final payment to

the Claimant to Kshs. 304,218.60 which was duly paid to the Claimant on 29<sup>th</sup> October 2015 and acknowledged by the Claimant's Advocate vide letter dated 30<sup>th</sup> October 2015;

c) That the Respondent has paid the PAYE sum of Kshs. 130,379.60 to Kenya Revenue Authority (KRA);

d) That the Claimant's continued pursuit of PAYE deductions while well aware of the provisions of the Employment Act which have been pointed out to the Claimant's Advocate is in bad faith, irregular and an abuse of the court execution process;

e) That the decretal sum is a lump sum payment and not a monthly or annual payment to be subjected to different tax bracket computation. According to tax principles, the applicable tax rate for Kshs. 434,598 is 30%.

6. The Claimant's reply is contained in a replying affidavit sworn by her Advocate, Daniel O. Rakoro on 9<sup>th</sup> March 2016. He depones that in his letter dated 30<sup>th</sup> October 2015 by which he acknowledged receipt of the cheque for Kshs.434,598, he requested for computation of PAYE. By 8<sup>th</sup> December 2015, no computation had been provided nor had the Respondent provided proof of remittance of any PAYE tax to KRA.

7. Upon receipt of letter dated 10<sup>th</sup> December 2015, Counsel for the Claimant disputed that tax was chargeable at 30%. He took the view that the applicable tax charge was 25%.

8. Counsel states that the decision to execute was informed by the Respondent's failure to provide proof of tax computation and remittance. He asks that the Respondent be directed to pay the Auctioneer's charges.

9. From the pleadings and submissions filed by the parties, it would appear that the only issue pending determination by the Court has to do with where the responsibility for meeting the Auctioneer's charges lies. The next logical question is whether the execution was justified.

10. The amount for which the Claimant moved to execute had been tagged as PAYE. While not disputing that PAYE was deductible from the award amount, the Claimant disagreed with the computation applied by the Respondent. She also sought confirmation that the deducted amount had actually been remitted to KRA.

11. Under Section 49(2) of the Employment Act, awards by this Court are subject to statutory deductions, including PAYE. Under Section 37 of the Income Tax Act, employers are under an obligation to deduct and remit PAYE to KRA. Bearing this duty in mind, the Respondent was justified to deduct tax from the decretal sum awarded to the Claimant.

12. Even assuming that the Respondent had miscalculated the tax payable, the Claimant had no legal basis to execute on an amount that she knew had been charged as tax. If she had a dispute on the tax amount payable or failure in remittance, she had recourse under the Income Tax Act.

13. That being the case, I find that the execution was not only unlawful but unreasonable. I therefore direct that the Claimant will pay the Auctioneer's charges for the execution.

14. I make no order for costs in the application.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 23<sup>RD</sup> DAY OF SEPTEMBER 2016**

**LINNET NDOLO**

**JUDGE**

**Appearance:**

Mr. Rakoro for the Claimant

Mr. Molenje for the Respondent