



**REPUBLIC OF KENYA**

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

**CAUSE NO. 199 OF 2013**

**SAMUEL KIPCHUMBA KAPTOGE**

**CLAIMANT**

**v**

**MOI TEACHING & REFERRAL HOSPITAL**

**RESPONDENT**

**RULING**

1. On 23 January 2015, the Court delivered judgment in which it found and held that the suspension of the Claimant was unfair, inequitable and unlawful and awarded him withheld salaries during the suspension period, amounting to Kshs 2,178,345/-.
2. On 15 May 2015, the Respondent filed a motion under certificate of urgency seeking stay of execution, and the grounds advanced were that the Respondent had fully settled the decretal sum (subjected to statutory deductions) and costs.
3. The supporting affidavit to the motion deposed that the Claimant had been paid Kshs 1,529,743/10 while Kshs 648,597/90 had been remitted to the Kenya Revenue Authority on account of tax.
4. In its submissions, the Respondent apart from reiterating the grounds and depositions in the supporting affidavit urged that warrants were extracted on 12 May 2015 while the decretal sum was paid in March 2015 and costs paid on 5 May 2015 and therefore no sums were due when auctioneers moved in.
5. The Claimant was served with the motion and he filed a replying affidavit on 18 May 2015.
6. In the replying affidavit, the Claimant admitted receipt of Kshs 1,529,747/- but asserted that the tax payable should have been Kshs 3,874/- multiplied by the 65 months he was under suspension, and hence the Kshs 648,597/- was on the higher side.
7. The Claimant also contended that the Respondent paid the taxed costs only after Auctioneers had been instructed.
8. In his submissions, the Claimant stated that the Respondent had been granted a 30 day stay of execution which lapsed on 12 April 2015 and that the costs were paid only on 11 May 2015 after the auctioneers had been instructed.
9. The Claimant also lamented that interest of Kshs 30,000/- and auctioneers charges had not been paid.
10. The Judgment of Court was clear that statutory deductions had to be made out of the award of withheld wages during suspension. That was in tandem with the law that all income be subjected to income tax.
11. The Claimant misconstrued the law when he contended that the monthly income tax be multiplied with the 65 months (the time he was serving under suspension). Income tax is calculated on a graduated scale and the higher the amount, the higher the tax. Lump sum payments would therefore attract much higher tax.
12. The statutory deductions made by the Respondent were therefore correct and the Court finds that

- the decretal sum has been fully settled.
13. Warrants of Attachment and Sale were given on 12 May 2015 and the same indicated that Kshs 30,346/- was interest on decretal amount. However, this was not in consonance with the judgment.
  14. The Claimant did not seek interest in the Memorandum of Claim and the Court did not award any interest on the decretal sum.
  15. The Claimant further alluded to auctioneers charges. The decretal sum less statutory deductions were paid on or about 18 March 2015. The payment was made way before auctioneers were instructed.
  16. Costs were taxed by consent at Kshs 250,000/- on 12 March 2015. A stay of 30 days was agreed by the parties. The stay would have lapsed on 11 April 2015. Payment was made through a cheque dated 5 May 2015. It is not clear from the papers exactly when payment was made but the Respondent informed the Court from the bar that payment was made on 5 May 2015 while the Claimant stated payment was made on 11 May 2015.
  17. According to the Claimant he had already instructed the auctioneers.
  18. The warrants in the Court file indicate the same were given on 12 May 2015. It is likely that the Claimant's Advocate may not have had the time to inform the auctioneers of the development.
  19. But at the end of the day, the Respondent did not settle the costs within the stay period and it should shoulder the auctioneer's charges.
  20. The Court therefore grants prayer (d) of the motion but with a rider that the Respondent meets the auctioneer's charges.
  21. Each party to bear own costs of the motion.

**Delivered, dated and signed in Nakuru on this 24<sup>th</sup> day of July 2015.**

**Radido Stephen**

**Judge**

**Appearances**

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

For Respondent Mr. Mbatia instructed by Mburu Maina & Co. Advocates

Court Assistant Nixon