



**IN THE INDUSTRIAL COURT OF KENYA AT NAKURU**

**CAUSE NO. 8 OF 2012**

**(Originally Nairobi Cause No. 872 of 2012)**

<b>DAVID KIMANI KANGEA</b>	<b>1<sup>ST</sup> CLAIMANT</b>
<b>KIHIU KAMAU</b>	<b>2<sup>ND</sup> CLAIMANT</b>
<b>DAVID NJUGUNA MUIRURI</b>	<b>3<sup>RD</sup> CLAIMANT</b>
<b>JOHN CHEGE MUCHUHA</b>	<b>4<sup>TH</sup> CLAIMANT</b>
<b>PATRICK MACHARIA NJOGU</b>	<b>5<sup>TH</sup> CLAIMANT</b>
<b>JOHN KINYUGO KAMAU</b>	<b>6<sup>TH</sup> CLAIMANT</b>
<b>FRANCIS NJOROGE</b>	<b>7<sup>TH</sup> CLAIMANT</b>
<b>STEPHEN EKITELA ERI</b>	<b>8<sup>TH</sup> CLAIMANT</b>
<b>JOHN NGUGI KAHIA</b>	<b>9<sup>TH</sup> CLAIMANT</b>
<b>ARTHUR KAIRU GITAU</b>	<b>10 CLAIMANT</b>
<b>v</b>	
<b>GEOTHERMAL DEVELOPMENT CO. LTD</b>	<b>RESPONDENT</b>

**RULING**

1. The Claimants filed a Statement of Claim against the Respondent on 24 May 2012 and the issues in dispute were stated as *unfair and illegal termination* and *non payment of terminal dues*.
2. The Respondent filed a Reply on 13 August 2012 and a Supplementary Reply on 25 April 2013.
3. After hearing the parties and considering submissions, Ongaya J delivered judgment on 7 June 2013. On 25 July 2013, the Respondent filed an application for review of the award and on 26 July 2013, consent on amounts to be paid to each Claimant was entered and the decretal sums paid less income tax and VAT which was remitted to Kenya Revenue Authority.
4. Despite the payments, the parties had a disagreement as a result of which the Claimants instructed auctioneers to execute. On 2 December 2013, the Respondent moved Court to stay the execution.

- Ongaya J gave a ruling on 20 December 2013 and ordered the Respondent to further pay some of the Claimants Kshs 681,836/58.
5. The Respondent was not satisfied with the ruling and on 14 February 2014, it filed an application for review of the ruling. The Claimants opposed the application and in a ruling delivered on 28 February 2014, the Court dismissed the review application.
  6. The 1<sup>st</sup>, 2<sup>nd</sup>, 5<sup>th</sup> and 6<sup>th</sup> Claimants being dissatisfied with the income tax deductions filed a Motion in Court on 1 August 2014 seeking an order directing the Respondent to provide them with P9A 2013 Tax deduction forms.
  7. The basis of the application was that these Claimants believed that they had been excessively taxed, as deposed in the supporting affidavit of David Kangea (1<sup>st</sup> Claimant), and in an endeavour to seek refunds from Kenya Revenue Authority had been informed to make available Forms P9A for 2013. A request made to the Respondent through email/letter dated 14 March 2014 did not elicit any response.
  8. This motion dated 1 August 2014 is the subject of this ruling. The motion was served upon the Respondent and an affidavit of service to that effect sworn on 8 August 2014 by Nelson Kisolei was filed in Court on the same day.
  9. When the matter was called up for hearing on 8 October 2014, there was no representation for the Respondent. Being satisfied that the Respondent had been served, the Court allowed Mr. Koima to prosecute the application.
  10. Mr. Koima submitted that the motion was not opposed and that he was relying on the grounds stated on the face of the motion and the supporting affidavit of David Kimani Kangea.
  11. All persons who earn an income in Kenya are required to submit tax returns every financial year. Part of the process involves the employer preparing the tax return form, signing it and giving the form to the employee to make the returns. Similarly an employee who puts in a request for income tax return is required by the tax authority to get details of income taxes paid through the employer and submit the same together with the refund application.
  12. Employers by law are agents of Kenya Revenue Authority in respect of Pay As You Earn from its employees income. The employer deducts and submits the tax together with the accompanying returns.
  13. An employer who faces a request from an employee for the forms or returns whether for purposes of putting in a request for refund or for record purposes therefore cannot in law refuse to provide such information. Even without the constitutional right of access to information now provided for in Article 35 of the Constitution, an employer is under a statutory duty to provide the details of income tax deducted from an employee's income to the employee on request.
  14. The Respondent in refusing to provide the documentation/information to these Claimants has created litigation over a matter which should not be contentious. Precious judicial time has needlessly been engaged.
  15. The Respondent is therefore ordered to provide these Claimants with their P9A forms within 3 days of service of the Court orders.
  16. Costs of the motion to the Claimants.

**Delivered, dated and signed in open Court in Nakuru on this 17<sup>th</sup> day of October 2014.**

**Radido Stephen**

**Judge**

**Appearances**

For  
Claimants  
Mr. Koima instructed by Kiplenge &  
Kurgat Advocates

For  
Respondent

Kipkorir Tele & Kitur Advocates (did not appear at hearing of motion)