



**REPUBLIC OF KENYA**

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

**CAUSE NO. 8 OF 2012**

**DAVID KIMANI AND 9 OTHERS.....CLAIMANT**

**-VERSUS-**

**GEOHERMAL DEVELOPMENT COMPANY LIMITED.....RESPONDENT**

(BEFORE HON. JUSTICE BYRAM ONGAYA ON FRIDAY 20<sup>TH</sup> DECEMBER, 2013)

**RULING**

The court delivered the judgment in this case on 7.06.2013. The applicant **Geothermal Development Company Limited** filed a notice of motion on 2.12.2013 brought under **Rules 16 (1) (3) (4), 31(2) and 36 of the Industrial Court (Procedure) Rules 2010, Order 22 Rule 22 of the Civil Procedure Rules and sections 1A, 1B and 3A of the Civil Procedure Act** and all other enabling provisions of Laws of Kenya. The substantive prayer was that the court be pleased to issue permanent orders barring the respondents, their servants and or agents from attaching the applicant's property.

The application was supported by the affidavit of Thomas Mburu attached on the application and the stated supporting grounds included:

- a. The respondent has paid all outstanding claimants' dues as ordered in the judgment.
- b. The payment was less tax which has been remitted to the Kenya Revenue Authority and being **Kshs.681,836.58** being income tax and VAT.
- c. The claimants have appointed Tango Auctioneers and General Merchants to execute for the sum deducted and remitted for tax and proclamation has issued.

It is not disputed that the claimants had been paid by the respondent in satisfaction of the judgment but without explanation of the deductions made from the judgment dues. The applicant has submitted that the deductions were for income tax with respect to the payments to each of the claimants.

The claimants' have submitted that claimants Nos. 1, 2, 5, and 6 who earned Kshs.720.00 per day being Kshs.20,160.00 per month were liable to pay income tax in view of the provisions of **section 49(2) of the Employment Act, 2007**. It was further submitted that the rest of the claimants were not liable to pay taxes. The respondent did not object to that submission as respondent's counsel conceded and the court finds for the claimants in that regard.

The court has considered the submissions and finds that the claimants are entitled to be paid

**Kshs.681,836.58** less income tax due from claimants Nos. 1, 2, 5, and 6.

In conclusion, the court makes the following orders:

- a. The respondent to pay the claimants **Kshs.681,836.58** less income tax due from claimants Nos. 1, 2, 5, and 6 by 15.1.2014 failing, execution for the due pay to continue.
- b. There be stay of execution until 15.1.2014.
- c. The respondent to pay costs of this application fixed at **Kshs.5,000.00**.

**Signed, dated and delivered** in court at **Nakuru** this **Friday, 20<sup>th</sup> December, 2013**.

**BYRAM ONGAYA**

**JUDGE**