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PAYMENTS MADE BY AN EMPLOYER AS DECRETAL SUMS SHALL BE SUBJECT TO STATUTORY DEDUCTIONS

Statutory deductions are mandatory deductions that an employer is obligated to take out of an employee's pay and remit to various government agencies. This article explores whether this is applicable to decretal sums which the court orders an employer to pay an employee at the conclusion of an Employment and Labour relations dispute.

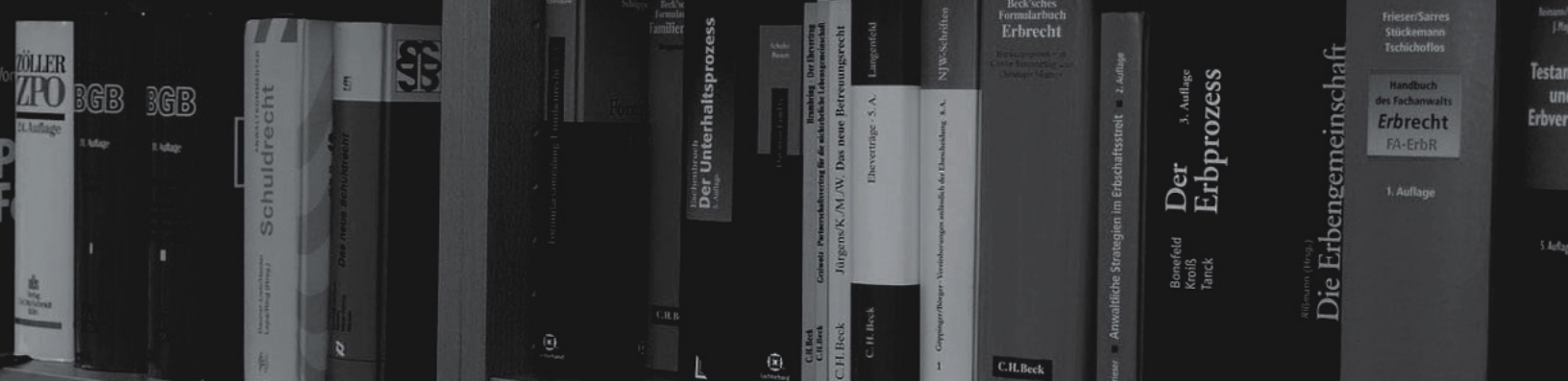
A recently decided matter cited as **DPL Festive Limited v Elijah Ochieng Rakuru [2022] eKLR** will be the precedent we use to issue an opinion on this subject. In this case, the learned Judge was tasked with hearing an Application wherein an employee sought to have the entire decretal sum released to him on the premise that the Court had not pronounced itself on the question of subjecting the Decretal Sum to the mandatory Statutory deductions.

In making a case that decretal sums are not exempt from statutory deductions, Counsel for the Employer advanced an argument referencing Section 49(2) of the Employment Act, 2007. He averred that this legal provision *"is couched in mandatory terms and the Court did not need to repeat itself, as the Section is effective by operation of law"*. The Employer's Counsel further relied on the decision of **Hosea Njeru Kagondu v Kenya Union of Commercial Food and Allied Workers (2012) eKLR**, where the Court held that *"all payments due under Section 49 of the Employment Act, are subject to statutory deductions."*

Conversely, it was the employee's assertion through his Counsel, that if the court had intended that the award is subjected to statutory deductions, nothing would have prevented it from saying so in its Judgment.

It is our considered opinion that the Learned Judge, Lady Justice **C.N Baari**, properly interpreted provisions of Section 49(2) of the Employment Act in determining this matter and finding that:

"... the provisions of Section 49(2) of the Employment Act, are couched in mandatory terms. It therefore follows, that every award made pursuant to this section is subject to statutory deductions. Secondly, arising from the wording of the section, the court does not have the latitude to subject some awards to statutory deductions and leave out others. It therefor does not need to pronounce itself on whether or not to subject the awards to statutory deductions, as it has no power not to; it goes without saying."



The following are the statutory deductions to be made against an employee's pay in Kenya

1.P.A.Y.E Tax:- this is tax deducted from gains and wages of an employee and remitted to the Kenya Revenue Authority. This includes but is not limited to the following payments: salary, leave pay, sick pay, fees, commission, bonus, gratuity, travel and entertainment allowances amongst other forms of wages due to an employee in exchange of services rendered to their employer.

These deductions are made as per the provisions of the Income Tax Act.

2.N.H.I.F:- these are deductions made on the employees' wages and remitted to the National Health Insurance Fund to cater for the employees' compulsory medical cover as contemplated under the National Health Insurance Fund Act.

3.N.S.S.F:- these are deductions made on the employees' wages and remitted to the National Social Security Fund under the National Social Security Fund Act. The employer must remit a contribution equal to the deduction made from the employee's wages in this fund.

4.Housing Levy:- these are deductions made on the employees' wages and remitted to the *National Housing Development Fund under the National Housing Development Fund Act which was amended to introduce mandatory housing levy to be contributed by both an employer and an employee. An employee's contribution is 1.5% of the employee's gross monthly salary. The employer is obligated to make an equal contribution to the same fund per employee.*

We therefore conclusively advise that any payments made by an employer on a decretal sum shall be subject to statutory deductions as discussed in the foregoing.

Please engage our team on any questions in respect of various Employment and Labour relations questions as well as tax compliance laws.