

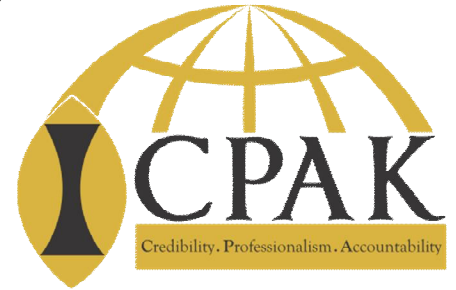
The Taxation Masterclass Program



Pay As You Earn

Facilitator: CPA Samuel Mwaura
Tax Partner, Grant Thornton

Introduction



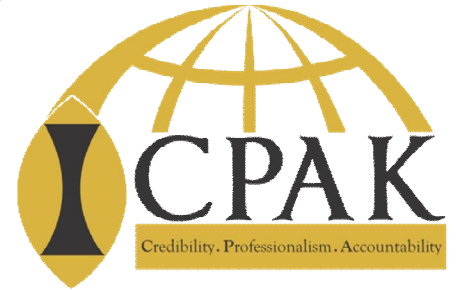
Background

- PAYE is Tax from employment and is charged on residents from worldwide income. As per Sec 3(1) of ITA
- In employment income a contract of service in form of an agreement must exist either expressed or implied, oral or in writing.
- There is a difference between a contract of employment and consultancy.

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Introduction



Background

- If Employed the employer has a selection of hiring and firing unlike being a consultant
- An employee enjoys benefits like medical cover and leave days
- A consultants uses his own tools like a laptop while in employment the employer facilitates the tool of trade
- An employer is obligated to pay wages or salary and exercises control on the work done by the employee. (I,e hours of work, where to work, when to work)

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Background

- Came to effect on 1st January 1974 with enactment of The Income Tax Act, 1974 (CAP 470) assented on 21st December 1973.
- Replaced the Pre-colonial taxation of Graduated Personal Tax (GPT) introduced in 1958;
- The ITA has gone through numerous changes with the latest being through The Tax Law Amendment Act (No. 2) of 2020

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Tax rates in different regimes

Kenyatta's Regime (1977)

	Amount p.a	Rate
On the first	£1,200	2%
On the next	£1,200	3%
On the next	£1,200	5%
On the next	£1,200	7%
On the next	£1,200	9%
On the next	£1,200	10%
On the next	£1,200	12%
On all total income over	£9,600	13%

Moi's Regime (2001)

	Amount p.a (KES)	Rate
On the first	116,160	10%
On the next	109,440	15%
On the next	109,440	20%
On the next	109,440	25%
On the next	444,480	30%

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Kibaki's Regime (2012)... **Kazi iendelee...**

	Amount p.a (KES)	Rate
On the first	121,968	10%
On the next	114,911	15%
On the next	114,911	20%
On the next	114,911	25%
On the next	466,704	30%

Jubilee ... Tano tena?

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PAYE Calculations

Income	NSSF	Taxable income	Pre-Covid Analysis		Covid Analysis		Post-covid Analysis	
			Personal relief	PAYE	Personal relief	PAYE	Personal relief	PAYE
24,000	200	23,800	1,408	1,547	2,400	-	2,400	-
100,000	200	99,800	1,408	22,597	2,400	16,500	2,400	22,383
900,000	200	899,800	1,408	262,597	2,400	216,500	2,400	262,383

- Tax rate for the highest tax band from 30%, to 25% and back to 30%
- Minimum taxable income increased from KES 13,486.00 to KES 24,000 per month;
- Relief increased from KES 1,408 to KES 2,400 per month;
- Tax payers will have to fill one return modified to capture ; one at 30% from Jan-Mar 2020 and the other at 25% for Apr-Dec 2020

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Charge to Tax

Charge to Tax



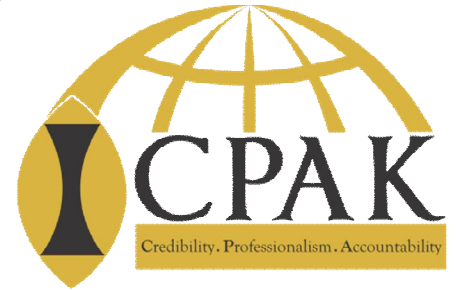
Key issues

- ✓ **“Employer”** - any resident person responsible for the payment of, or on account of, emoluments to an employee, and an agent, manager or other representative so responsible in Kenya on behalf of a non-resident employer
- ✓ “..a tax known as income tax shall be charged...for each year of income **upon all the income of a person**, whether resident or non-resident, which **accrued in or derived from Kenya.**”
- ✓ Resident - have a **permanent home** in Kenya or are in Kenya for:
 - **183 days or more in aggregate** during the current tax year; or
 - **average of more than 122 days** per year in the current tax year and the two preceding years

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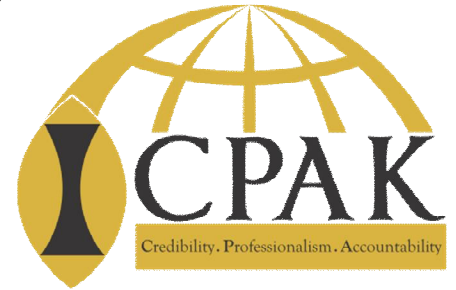
Income chargeable to tax;

- ✓ Cash benefits and allowances;
- ✓ Non-cash benefits of KES 3,000 p.m (KES 36,000 p.a)
- ✓ Per diem – KES 2,000 treated as reimbursement of expenses; any amount above KES 2,000 should be accounted for or charged to tax. Employee must be outside his usual place of work and on official duties;
- ✓ **Motor Vehicle** – 2% on the cost of MV (Hired Car – Cost of Hire)

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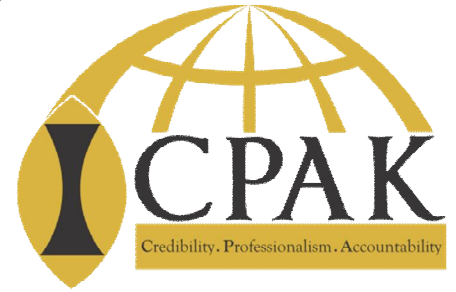
Income chargeable to tax;

- ✓ Housing Benefits , (15% of gross pay or Market value)
- ✓ School Fees Benefit
- ✓ Furniture 1% (Fridge – Cost)
- ✓ **Fringe Benefit Tax (FBT)** – for loans provided to employees below the interest rate provided by the Commissioner. The benefit is the difference in rate and is chargeable to FBT

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Charge to Tax



Question

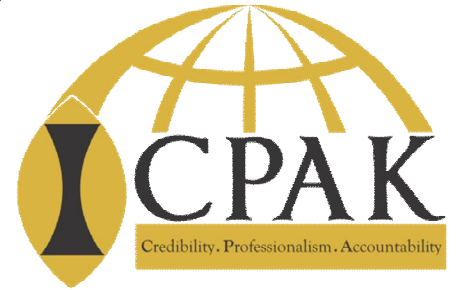
Mr. Zee, a Kenyan Citizen and an employee of a resident person is sent to Country B for a 5-year long assignment. The resident person pays for relocation costs, offers security, other necessary items for Mr. Zee to enable him settle in Country B. He will also be receiving his monthly pay and other allowances from the employer and the same is not taxed in Country B.

Is Mr. Zee subject in Kenya for tax purposes?

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Discussion

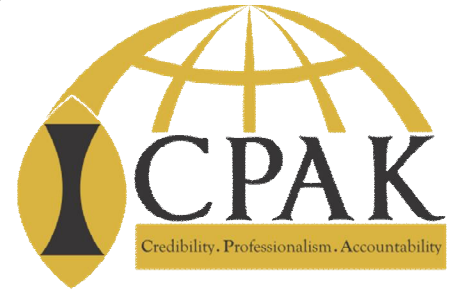
Section 38, ITA

(2) If any citizen of Kenya chargeable to tax in Kenya for any year of income on employment income or income in respect of any activity under section (10)(e) of this Act accrued in or derived from another country proves to the satisfaction of the Commissioner that he has paid tax in such other country for such year of income in respect of the same income, he shall be entitled to set-off by way of credit of the same tax against the tax charged in Kenya on such income.

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Charge to Tax

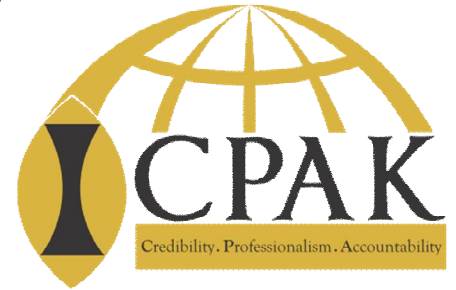


Sec 37, 37(a) and 51 of ITA

- The authority to deduct PAYE is vested on the employer in such a manner as prescribed by the commissioner. Should **the employer fail to deduct and account for it (pay)** the employer will be penalized.
- **Sec 37(A)** The directors or every officer of a corporate body can be sued to recover the non paid PAYE.
- **Sec 51** Protects or indemnify the employer from any form of prosecution by the employee.

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Charge to Tax



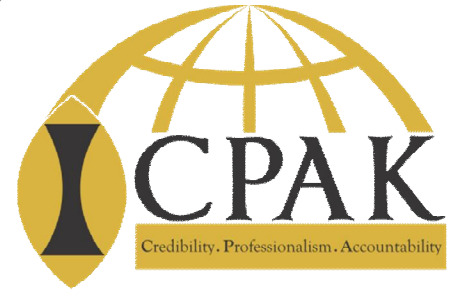
Penalty for late filing and paying?

- **Date:** Return should be filed and tax payable on or before the 9th of the following month.
- **Penalty on late filing:** 25% of the tax due or Kshs. 10,000, whichever is higher.
- **Penalty on late payment:** 5% of the tax due and a late payment interest of 1% per month on the unpaid tax until the tax is paid in full.

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Charge to Tax



Emerging Issues

- House Ownership Savings Plan is no longer an allowable deduction;
- Change of Personal relief and PAYE bands;
- Bonuses and Overtime paid to low income earners are now chargeable to tax;
- Distinction between an employee and consultant;
- Distinction between a full time employee and casual employees; (Salary vs Wages)
- Non inclusion of taxable benefits;

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PAYE Performance vs Other Taxes

PAYE Performance vs Other Taxes



PAYE Performance vs Other Tax

	2018/19 KES (m)	2017/18 KES (m)
Import Duty	105,209	93,713
Excise Duty	195,731	168,063
VAT Import	179,178	151,677
VAT Domestic	230,348	205,099
PAYE	392,693	364,104
Other Income Taxes	296,042	278,277
Other Exchequer	77,772	63,346
Agency	103,090	95,090
Grand Total	1,580,063	1,419,369
% of total collections	25%	26%

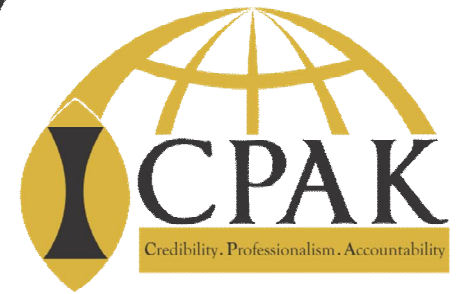
PAYE collections second highest after VAT in FY 18/19.

Will it change in 20/21 due to DST and minimum tax?

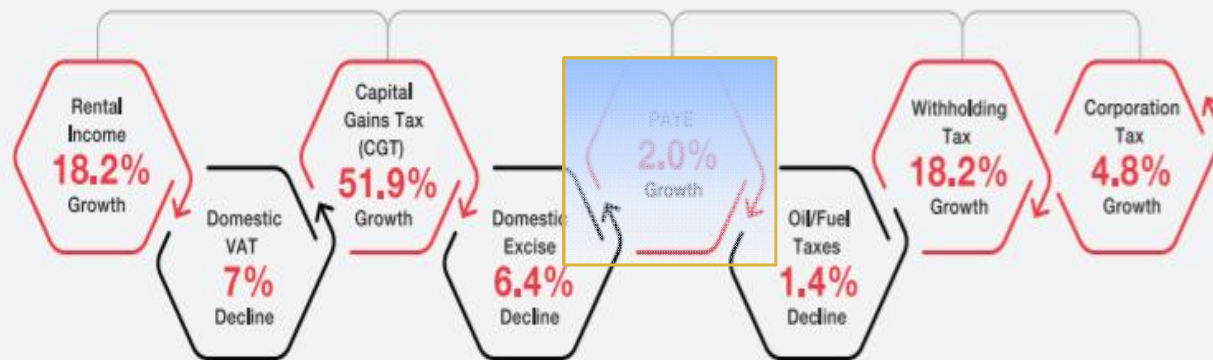
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PAYE Performance vs Other Taxes



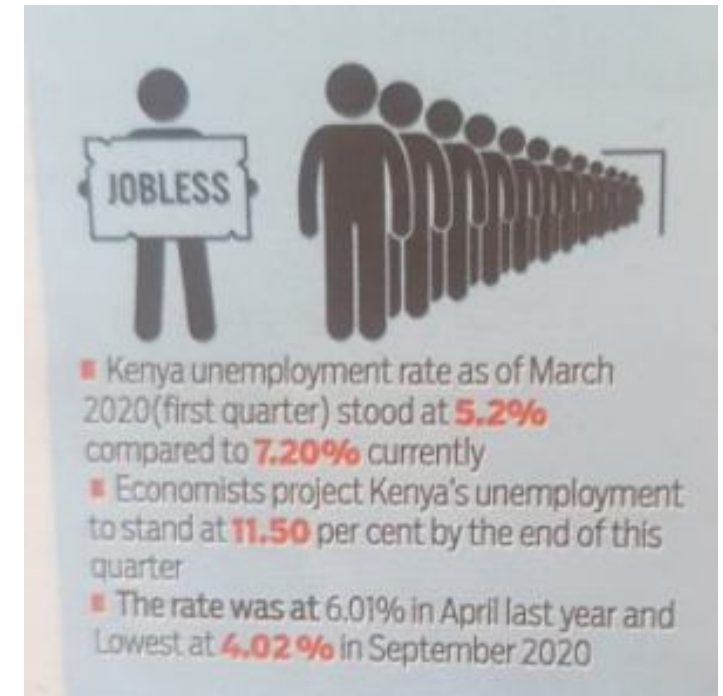
ABRIDGED FULL YEAR REVENUE PERFORMANCE FY 2019/2020 (JULY 2019-JUNE 2020) TAX PERFORMANCE



Grew by 2% in 2019/2020;

Expected to decline in 20/21 due to Covid?

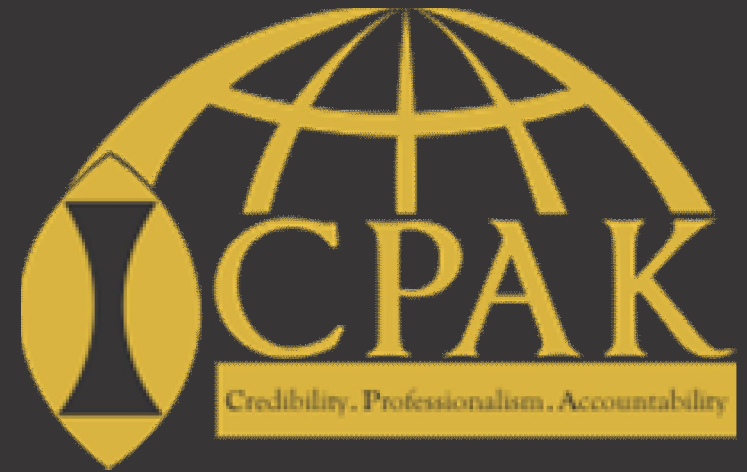
- *Unemployment; Job loss; 25% rate;*



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PAYE



Comparison with other Countries

Introduction



	2016	2017	2018	2019	2020	2021
Africa average	31.6	31.92	32.4	31.96	31.77	-
Americas average	31.68	32.59	32.82	32.88	32.52	-
Asia average	27.35	27.65	27.67	28.64	28.67	-
EU average	37.58	38.06	38	38.03	37.14	37.87
Europe average	32.37	32.67	32.04	31.87	31.3	31.77
Global average	30.97	31.41	31.35	31.45	31.16	31.3
OECD average	41.74	42.15	42.01	41.65	41.22	41.81

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	2016	2017	2018	2019	2020	2021
Algeria	35	35	35	35	35	35
Angola	17	17	17	17	17	17
Argentina	35	35	35	35	35	35
Australia	45	45	45	45	45	45
Bahrain	0	0	0	0	0	0
Belgium	50	50	50	50	50	50
Botswana	25	25	25	25	25	25
Canada	33	33	33	33	33	33
China	45	45	45	45	45	45
Congo (Democratic Republic of the)	40	40	40	40	40	40
Denmark	56.4	55.79	55.85	55.89	55.89	55.89
Egypt	25	22.5	22.5	22.5	22.5	22.5
Ethiopia	-	35	35	35	35	35
France	22.5	49	49	45	45	45
Germany	45	45	45	45	45	45
Greece	45	45	45	45	44	44
India	35.54	35.54	35.88	35.88	42.74	42.74
Ireland	48	48	48	48	48	48
Italy	43	43	43	43	43	43
Japan	55.95	55.95	55.95	55.95	55.95	55.95
Kenya	30	30	30	30	30	30
Romania	16	16	10	10	10	10
Russia	13	13	13	13	13	13
Zambia	35	37.5	37.5	37.5	37.5	37.5
Zimbabwe	51.5	51.5	51.5	45	40	40

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Comparison with other Countries



KE

\$3,542 - 30%

Highest tax bands

Nigeria

SA

TZ

UG

UK

Highest
tax band

\$488 - 24%

\$105,152 - 45%

\$431 - 30%

\$32,770 - 40%

\$208,875 - 45%

\$ 3,542

21%

18%

30%

30%

20%

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Comparison with other Countries



PAYE - Germany

Germany has progressive tax rates ranging as follows (2020 tax year):

Taxable income range for single taxpayers (EUR)		Taxable income range for married taxpayers (EUR)		Tax rate (%)
Over	Not over	Over	Not over	
0	9,408	0	18,816	0
9,408	57,051	18,816	114,102	14*
57,051	270,500	114,102	541,000	42
270,500	and above	541,000	and above	45

Incentive to marry?

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Comparison with other Countries



Revenue Collection from PAYE

	Kenya	NGA	SA	UG	UK
	KES (m)	NGN (m)	ZAR (m)	UGX (m)	GBP (m)
Revenue	364,103	669,218	489,732	2,396,112	184,968
2018 employed persons (m)	17	70	17		32
Equivalent \$ (m)	3,323	1,633	32,916	654	257,847
Revenue Per person employed	192	23	1,995	#DIV/0!	7,960

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Comparison with other Countries



PAYE Calculator

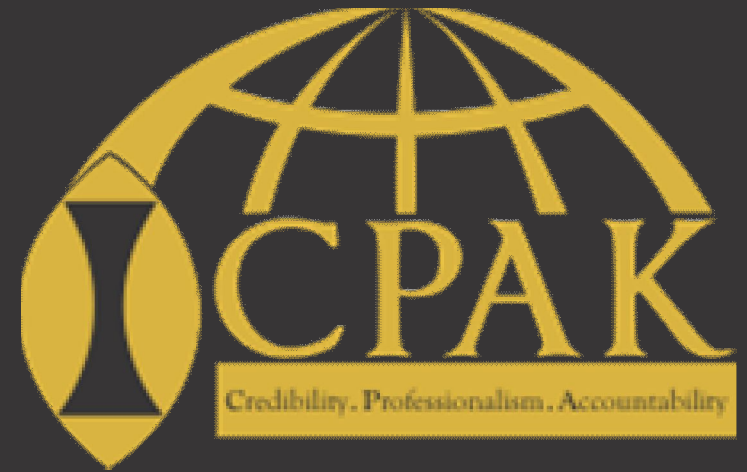
Where will you pay more taxes in the EAC?

Country/ Monthly Pay (KES)	Kenya	Uganda	Burundi	Rwanda	Tanzania
80,000	16,323	21,068	22,758	22,234	15,987
150,000	37,323	42,068	42,918	43,234	36,987
300,000	82,323	87,154	86,118	88,234	81,987

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PAYE



Disputes & Case Laws

Disputes & Case Laws



- Kenyan Tax Regime is a self-assessment type where tax payers assess themselves against their income;
- Disputes will always arise due to grey areas in the Law where taxpayers' interpretation is different from that of the KRA officers;
- Dispute may arise due to tax evasion by taxpayers;;
- Tax Dispute Resolution Mechanisms will be discussed tomorrow;

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Disputes & Case Laws



1. KRA vs CRBC

CRBC entered into a contract with KRC to build the SGR. They required security for the rail network and employees. Hence, entered into a contract with NPS to second police officers to CRBC who would give the officers so deployed daily allowances;

Issue

Was CRBC responsible to deduct PAYE on the daily allowances paid to the police officers?

Disputes & Case Laws



KRA vs CRBC.. (cont'd)

High Court Ruling by Justice D S Majanja

...I therefore find and hold that Section 37 of the ITA bespeaks an employer-employee relationship. Since CRBC was not an employer, it was not under a statutory obligation to deduct and remit any tax in accordance with section 37(1) of the ITA...

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Disputes & Case Laws



KRA vs CRBC.. (cont'd)

Emerging issues

- Does contract wording redefine taxpayer's responsibility; Who bears the burden when the contract is not clear?
- Does the ruling give precedence for tax evasion? e.g. does it mean all police officers will not be taxed on allowances paid to them for guarding private properties, banks or providing security at soccer matches and private functions under such like contracts

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Disputes & Case Laws



1. Estate of JOSEPH KILINDA vs BAMBURI CEMENT LTD

Is an award of the Employment and Labour Relations Court (ELRC) for wrongful termination subject to statutory deductions and in particular Pay As You Earn (P.A.Y.E).?

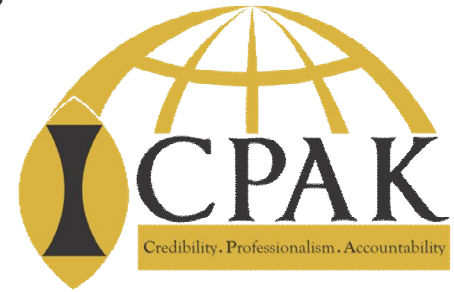
Issue

The learned Judge (Rika, J.) of the ELRC entered judgment in favour of Joseph Kilinda (deceased) for wrongful termination of his services by the respondent. The respondent paid the deceased's estate KES. 5,450,704/= and withheld KES. 2,634,532/= as P.A.Y.E.

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Disputes & Case Laws



Estate of JOSEPH KILINDA vs BAMBURI CEMENT LTD (cont'd)

Issue

The appellant disagreed and in turn took out warrants of attachment for the withheld amount on 1st July, 2016. Apprehensive that the appellant would execute the warrants, the respondent filed an application dated 4th July, 2016 before the ELRC seeking *inter alia*, stay of execution of the warrants and a declaration that it had fully satisfied the award issued on 22nd May, 2015

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Disputes & Case Laws



KRA vs CRBC.. (cont'd)

Judgement

- The learned Judge, in his ruling dated 29th July, 2016 held that an award issued by the ELRC, such as the one issued in favour of the deceased's estate, was subject to taxation. In addition, **the obligation of an employer to deduct P.A.Y.E applied not only to its employees but also to employees who had been terminated.**

Thank You

