



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT BUNGOMA**

**CAUSE NO. 6 OF 2017**

**AUGUSTINE SIFUNA WANYONYI.....CLAIMANT**

**VERSUS**

**ONE ACRE FUND.....RESPONDENT**

**J U D G M E N T**

The Claimant was employed by the Respondent as a Field Officer on 1.11.2015 at a monthly salary of Kshs 11,798.16. The Claimant worked until 10.11.2016 which month his salary was not paid for lack of meeting targets. The Claimant was stopped from working and was also accused of having defrauded a farmer.

The Claimant denies both allegations of not meeting the targets and stealing Kshs 4,070 from a farmer.

The Claimant states that he was not given opportunity to explain his case before his termination. The Claimant stated that his set target was 90% repayment by farmers, but he had achieved 98.77%. He produced a letter to that effect.

Claimant also produced certificate of appreciation for good work dated 18.4.2016. The Claimant sought compensation for wrongful termination; notice pay and certificate of service. The Claimant also sought payment of 10 days salary for November, 2016.

During cross examination, the Claimant denied having signed a form to acknowledge receipt of Kshs 4,070 from a farmer. Claimant protested that the document was a forgery that he saw for the first time before court. The Claimant received the letter of dismissal on 11.11.2016 but was not paid salary for days worked.

Claimant admitted that on 10.11.2016 he was called before Human Resource Disciplinary Committee. He stated that he explained his case before the committee. The farmer he was alleged to have defrauded was not called to the meeting despite his persistent request for him to attend. He denied having received cash from a farmer. He denied also having promised to repay the amount.

RW1 Francis Odhiambo testified for the Respondent. He relied on a witness statement filed on 26.9.2018. He also produced exhibits marked '1' to '6'.

The witness was a HR officer employed by the Respondent in the year 2017 after the Claimant had left the employ of the Respondent. RW1 stated that from the record, the Claimant defrauded a farmer by the name Fuela George.

RW1 stated that the Claimant admitted the offence and signed a form to that effect. RW 1 denied that the signature on the form was a forgery.

RW1 stated that the Claimant also received a Show Cause Letter on 31.10.2016 and the hearing took place on 10.11.2016. RW1 prays the suit be dismissed with costs.

**Determination:**

The issues for determination are

- (i) Whether the employment of the Claimant was terminated for a valid reason and per fair procedure
- (ii) If the Claimant is entitled to the reliefs sought.

**Issue 1:**

The evidence by the Claimant and that by RW1 is mutually destructive on the issue whether the Claimant admitted that he had wrongfully received cash from a farmer in the sum of Kshs 4,070 and signed a default form to that effect. The Claimant alleges that the admission form was a forgery and had only seen it for the first time in court.

It is clear that the Claimant was called to a disciplinary hearing following investigations for which it was established that a farmer had paid the Claimant Kshs 4,070 in cash contrary to the Company policy.

The court is satisfied that the Claimant received a show cause letter dated 28.10.2016 on 31.10.2018 and he had signed it acknowledging receipt of it.

The minutes of the disciplinary hearing held on 10.11.2016 show that the acknowledgment form was discussed and that Claimant had admitted having signed the form to avoid arguments.

The court is satisfied that the Claimant had appended his signature on the said minutes and his telephone number.

Similarly, the Claimant had appended his signature on the Default acknowledgment Form and it was far fetched for the Claimant to allege that the Respondent forged his signature.

The court is satisfied that the Respondent had a valid reason to terminate the employment of the Claimant in terms of Section 43 of the Employment Act. The Court is also satisfied that the Claimant was subjected to a fair disciplinary procedure in compliance with Sections 41 and 45 of the Employment Act. 2007.

Accordingly, the termination of employment of the Claimant was lawful and fair and in compliance with Section 45 of the Act.

### **Issue II.**

With regard to the terminal benefits, the court is satisfied that the Claimant was not paid for the 10 days worked in November and was not given a certificate of service. The court awards the Claimant 10 days salary in the sum of Kshs 3,932.

The Claimant is also entitled to one month salary in lieu of notice in the sum of Kshs 11,798.16.

Judgment is entered in favour of the Claimant against the Respondent as follows

1. Kshs 3,932 arear salary
2. Kshs 11,798.16 one month notice
3. Total Kshs 15,730.60
4. Interest at court rates from date of filing suit till payment in full.
5. Costs of the suit.
6. Certificate of service to be granted in 30 days.

**DATED, SIGNED and DELIVERED at BUNGOMA this 29<sup>TH</sup> day of MARCH, 2019.**

**HON. M. N. NDUMA, JUDGE**

**EMPLOYMENT AND LABOUR RELATIONS COURT**

**BUNGOMA**

### **Appearances:**

Claimant in person

Mr. Makokha for the Respondent

Chrispo: Court Assistant.