



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT BUNGOMA**

**CAUSE NO. 24 OF 2017**

**(FORMERLY KISUMU CAUSE NO. 116 OF 2017)**

## **Defence**

12. The Respondent filed a response to the claim on 30<sup>th</sup> June, 2017 in which it denied the claim in its entirety and in particular stated that the Claimant's employment was lawfully terminated for completing a false appraisal form for an employee who was not reporting to duty. That due process was followed in disciplining the Claimant.

13. The Respondent called RW 1 David Wanjala Juma, who worked as a Farm Assistant for the Respondent. RW 1 stated that the Claimant caused renewal of contract of one Rodgers Baraza, upon filling a false appraisal form. That Rodgers was involved in a road traffic accident on 29<sup>th</sup> August, 2016 and was not able to work. He was on wheel chair. Rodgers remained in the company payroll during this time, though was off duty. The Claimant filled an appraisal form on 28<sup>th</sup> January, 2016 in which it was depicted that the Claimant was at work during this period and had performed well. Rodger's contract was renewed based on the information provided by the Claimant in the appraisal form. Management later found out that the Claimant had misled them. This led to the disciplinary action and termination of employment of the Claimant.

## **Determination**

14. The issue in dispute is whether the employment of the Claimant was terminated for a lawful reason and in terms of a fair procedure. In terms of section 106, 107 and 108 of the Evidence Act, Cap 80 Laws of Kenya, as read with section 47(5) of the Employment Act, 2007 the Claimant bears the burden of proving his case on a balance of probabilities. The Claimant has failed to show that the Respondent had no justifiable reason to terminate his employment. The Respondent has successfully rebutted the evidence by the Claimant and has shown that the Claimant filled a fraudulent appraisal form which misled management to renew the contract of an employee who worked under supervision of the Claimant. The Claimant admitted giving the false information stating that he did so under duress from his supervisors.

15. The Claimant had a moral and contractual duty to state the truth in the appraisal form and was wholly to blame for the false information he put there.

16. Accordingly, the Claimant has failed to prove his case on a balance probabilities. The entire claim has no merit and same is dismissed.

17. Each party to bear their own costs of the suit.

**Judgment Dated, Signed and delivered in Kisumu this 18<sup>TH</sup> day of October, 2018**

**Mathews N. Nduma**

**Judge**

**Appearances**

Bruce Odeny for Claimant

M/s. Alinaitwe for Respondent

Chrispo – Court Clerk