

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 107 OF 2014

(Before Hon. Lady Justice Maureen Onyango)

BILHA FWENDE MASINDEAPPLICANT

-Versus-

SIBUMBA FARMERS CO-OPERATION SOCIETY LTD.....RESPONDENT

RULING

Judgment in this case was delivered on 9th October 2015. Being dissatisfied by the judgment the Applicant filed an application for review of judgment on grounds that the terminal benefits and compensation awarded to her in the judgment was based on her starting salary of Kshs. 3500 instead of her last salary of Kshs.20,733. After hearing the parties on the application I directed the Respondent to produce records of the Applicant's salary and allowances for the last 12 months prior to the termination of her employment as the Respondent had disowned the Muster roll produced by the Applicant but did not produce any Muster Roll themselves.

The Respondent has failed to produce the said records and the court therefore has no option but to rely on the records produced by the Applicant. As stated in my ruling dated 1st December 2016 the court has been compelled to apply the provisions of section 10(6) and (7) of the Employment Act which shifts the burden of proof to the employer where the employer fails to produce prescribed records.

The foregoing being the case I find that the Claimant's last salary as per Muster Roll Book for Sibumba Farmers Co-op Society for the period 2009 to 2014 was Kshs.20,733. I consequently review the award in the judgment dated as follows:

1. 3 months salary in lieu of notice Kshs. 62,199.00
2. Compensation equivalent to 12 months salary Kshs. 248,796.00.
3. 3 months salary upheld during suspension Shs.62,199.00.

The rest of the judgment is as delivered on 9th October 2015.

Dated and signed and delivered this 4th day of May, 2017

MAUREEN ONYANGO

JUDGE