



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT AT KISUMU**

**CAUSE NO.107 OF 2014**

**(BEFORE HON. LADY JUSTICE MAUREEN ONYANGO)**

**BILHA FWENDE MASINDE .....CLAIMANT**

**VRS**

**SIBUMBA FARMERS CO-OPERATIVE SOCIETY LIMITED.....RESPONDENT**

**RULING**

I have perused the application by the Claimant seeking review of the Judgement herein on grounds that the terminal benefits and compensation awarded to the Claimant were based on Shs.3,500 which was her salary at commencement of employment and stating that her final salary was Shs.20,733. I have also perused the replying affidavit of Moses Nalyanya which disowns the copies of payroll annexed to Claimant's affidavit in support of her application for review.

It is true that the judgement of the court was based on the salary stated in the Claimants letter of appointment dated 13th October, 2000. It is common sense that the Claimant's salary at the time of termination of employment on 18th December, 2012 could not have been the same as her salary at the commencement of her employment. It is therefore obvious that the averments in the replying affidavit at paragraph 13 and 15 thereof that the claimant earned the same salary cannot be true and that the deponents of the affidavit is guilty of perjury.

Since the deponent of the replying affidavit has disowned the Muster Roll produced by the Claimant, it is upon the Respondent to submit evidence of his averment in the affidavit that the claimant's last salary was not shs.20,733 as alleged but Shs.3,500. The Employment Act at Section 10 and 74 both provide for keeping of records by an employer and the production of such records when required to do so.

Under section 3 of the Employment and Labour Relations Court Act this court is obligated to dispense justice and parties and their representatives are required to assist the court to further the objectives of the court to facilitate just, expeditious, efficient and proportionate resolution of disputes. Swearing an affidavit with incorrect facts or deliberately withholding information by a party impedes this court's objective to dispense justice expeditiously.

To ensure justice is done in this case the Respondent is directed to produce records of payment of the Claimant's salary and allowances for 12 months preceding the termination of her employment within 30 days to enable the court substantively deal with the application dated 11th November, 2015. Should the Respondent fail to produce such records the court will be compelled to fall back on the provisions of section 10(6) and (7) of the Employment Act to determine the application.

**Dated and signed and delivered this 1st day of December, 2016**

**MAUREEN ONYANGO**

**JUDGE**