



**IN THE INDUSTRIAL COURT OF KENYA**

**AT NAIROBI.**

**(Before: Charles P. Chemmutut, J.)**

**CAUSE NO.8 OF 2002.**

**IMPALA GLASS INDUSTRIES LTD.....Applicants.**

**- v -**

**KENYA UNION OF COMMERCIAL, FOOD & ALLIED WORKERS.....Respondents.**

**Issue in Dispute:-**

**Forced early retirement of Mr. Samuel Musyoka, Fredrick Mbuku and five others (hereinafter called the grievants) and**

**refusal to discuss Voluntary Early Retirement package”. No appearance for the Applicants (hereinafter called the Company).**

**No appearance for the Respondents (hereinafter called the Union).**

**INTERPRETATION OF THE AWARD.**

The Court announced its *ex parte* award in this dispute on 15<sup>th</sup> October, 2002, and on 8<sup>th</sup> November, 2002, Mr. J.N. Namasake, Principal Executive Officer, F.K.E., filed, on behalf of the Company, an application under Section 16(5) of the Trade Disputes Act, Cap.234, Laws of Kenya (which is hereinafter referred to as the Act) for interpretation of the award, praying that the Company has nothing to pay to the two grievants and that any payment in excess of 12 months monetary wages is *ultra vires* Section 15(1)(ii) of the Act.

It is on record that Mr. Namasake neither filed his reply statement to the Union’s memorandum, although the dates of filing the same and the hearing of the dispute were taken by mutual agreement and also despite being served with a copy thereof, nor did he appear for the Company or gave any reasons for his non-appearance. In the circumstances, the Court was fully justified to proceed *ex parte* and the award cannot be questioned.

After all, the amounts awarded to the grievants in this dispute are for the unexpired periods of their services had they been allowed to retire normally at the age of 55 years, but for the unilateral, arbitrary and premature retirement. Therefore, the prayer by the Company that the award contravenes Section 15(1)(ii) of the Act is baseless and completely untrue.

Accordingly, the application for interpretation of the award arising from the proceedings to which Mr. Namasake was not a party amounts to an appeal against the award and clearly an abuse of the

process of the law. In the result, the application for interpretation of the award is hereby summarily rejected.

**DATED** and given at Nairobi this 11<sup>th</sup> day of November, 2002.

Charles P. Chemmutut,

**JUDGE.**