

REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 871 OF 2012

BETWEEN

ELIJAH K. TONU.....CLAIMANT

VERSUS

NGARA OPTICIANS.....RESPONDENT

RULING

The Award of the Court was delivered on 28th January 2014. The Respondent was ordered to pay the Claimant a total sum of Kshs.426,461.45, comprising service pay and annual leave.

The Respondent did not participate in the main hearing, despite having filed a Statement of Response.

On 12th February 2014, the Respondent filed an application seeking to set aside the Award, and to be allowed to respond to the Claim.

The application is based on the affidavit of the Respondent's Advocate Rachel Mbaka, sworn on 11th February 2014.

The Claimant is opposed to the application, and filed 4 Grounds in opposition, on 18th February 2014.

The Application was heard on 19th February 2014. The Respondent acknowledges it was notified of the hearing date for the main Claim. Its Advocates inadvertently failed to record the date in their office diary. This is an error that should not be visited on the Respondent and the Claimant would not be prejudiced by the setting aside of the Award. The Claimant's position is that the Respondent's Advocates have not shown they failed to record the hearing date by error. The Claimant would be prejudiced if the Award is set aside, as he has been out of work from 2011.

The Court finds and Orders:-

1. The Award made by the Court is in the nature of statutory payments, nothing more. The Claimant left employment in 2011, after 25 years of work; he left with nothing. All the Court ordered is that he is paid service pay and annual leave as contemplated by the Law.
2. He has already been prejudiced by not receiving a social security payment, 3 years after he left employment. The Court would be prejudicing him further, by setting aside its decision, and opening up another round of hearings.
3. The Respondent had an opportunity to respond in full to the Claim, but did not attend the hearing. There is no convincing reason why the Respondent's Advocates failed to attend Court. The record of the Court indicates there has been no attendance by the Respondent, even on previous Court sessions, when procedural orders in one form or the other, issued. *IT IS ORDERED:-*

(a) The application dated 11th February 2014 is rejected.

(b) No order on the costs.

Dated and delivered at Nairobi this 18th day of March 2014

James Rika

Judge