



**REPUBLIC OF KENYA**

**Industrial Court at Nairobi**

**Cause 962 of 2012**

KAMAU MAINA.....CLAIMANT

**VERSUS**

THIKA COFFEE MILLS LIMITED.....RESPONDENT

*Rika J*

*CC. Leah Muthaka*

*Mr. Odongo for the Claimant*

*Ms. Owino for the Respondent*

**RULING**

The Court made an Award in favour of the Claimant for payment of Kshs.432,361, on 20<sup>th</sup> February 2013. Hearing proceeded ex parte. The hearing date was taken by consent by the two Advocates. Neither the Respondent, nor its Advocates appeared for the hearing.

The Claimant initiated execution proceedings prompting the Respondent to file an application dated 2<sup>nd</sup> April 2013, seeking to set aside the Award, and to have leave granted to the Respondent to defend the claim.

Parties agreed to have the application determined on the basis of written submission, which have been placed on the record.

*The Court Finds and Orders:-*

1. There is no good ground to show why the Award should be vacated. The Respondent's Advocates state they failed to schedule the hearing date in their diary. That on its own is not sufficient to warrant interference with the outcome of the ex parte proceedings.
2. The Respondent complains about the manner in which the Claimant sought to tax his Bill of Costs. This is not an issue that has any bearing on the Award on record, and is not a factor in determining whether the Award should be vacated, and leave granted to defend.
3. The main ground raised by the Statement of Response on siphoning of diesel by the Claimant, was examined in the Award of the Court, and a finding made. The Court was persuaded by the evidence of the Claimant that this allegation did not amount to a valid reason to justify the termination decision.

4. The Respondent was granted adequate opportunity to demonstrate the validity and fairness of termination. It did not take up the chance, opting to file a sketchy Statement of Response, unsupported by evidence, and opting to boycott the hearing. It is unpersuasive that the Respondent's Advocates failed to record the hearing date in their diary. Advocates appearing before this Court normally carry personal diaries, and record the date as soon as it is given in Court. Mr. Odongo and Ms. Owino took the date on 3<sup>rd</sup> July 2012. The Court does not attach much value to the extract of the Respondent's Advocates' diary for 18<sup>th</sup> October 2012. This is just one diary in a large Law Firm, and probably not the diary Ms. Owino carried to Court on 3<sup>rd</sup> July 2012. Decisions made in favour of employees should not be interfered with at the drop of a hat.

**5. For these reasons, the application dated 2<sup>nd</sup> April 2013 is rejected, with no order as to costs.**

Dated and delivered at Nairobi this 24<sup>th</sup> day of May 2013

James Rika  
Judge

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