



**Kimani v Xhao Zhedong t/a Sing Sing [K] Limited (Cause 634 of 2011)  
[2022] KEELRC 4017 (KLR) (29 September 2022) (Ruling)**

Neutral citation: [2022] KEELRC 4017 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 634 OF 2011  
J RIKA, J  
SEPTEMBER 29, 2022**

**BETWEEN**

**DANIEL KIMANI ..... CLAIMANT**

**AND**

**XHAO ZHEDONG T/A SING SING [K] LIMITED ..... RESPONDENT**

**RULING**

1. Parties agree that this Claim, was dismissed by the Court on 19<sup>th</sup> April 2016, when they both failed to attend Court for hearing.
2. The Claimant has filed an Application dated 6<sup>th</sup> May 2022, seeking reinstatement of the Claim.
3. The Application is founded on the Affidavit of the Claimant's Advocate Dola Indidis, sworn on 6<sup>th</sup> May 2022.
4. The Advocate states that he did not receive notice from the Court on hearing scheduled on 19<sup>th</sup> April 2016. He states that Parties filed their Pleadings, and were waiting for a hearing date, when the Claim was dismissed.
5. Zhedong filed a Replying Affidavit sworn on 10<sup>th</sup> June 2022. He explains that the Claimant obtained ex parte orders through an Application dated 23<sup>rd</sup> August 2011, requiring the Respondent to deposit the sum of Kshs. 5,063,713 in Court, being the entire amount claimed, on the allegation that the Respondent, a Chinese national, was a flight risk. Having obtained the orders, the Claimant went to bed, and took no action, to prosecute his Claim between 20<sup>th</sup> September 2012 and 19<sup>th</sup> April 2016.
6. It was agreed by the Parties that the Application is considered and determined on the strength of their Affidavits and Submissions. Submissions were confirmed to have been filed and exchanged, at the last mention on 27<sup>th</sup> July 2022.



**The Court finds:**

7. There is no adequate explanation from the Claimant, of delay in prosecuting the Claim, between 20<sup>th</sup> September 2012 and 19<sup>th</sup> April 2016.
8. Similarly, there is no acceptable explanation from the Claimant, for delay of 6 years, from 19<sup>th</sup> April 2016 when the Claim was dismissed, to 6<sup>th</sup> May 2022, when the Application for reinstatement of the Claim was made.
9. The Claimant appears to have gone to bed in comfort, upon obtaining orders for deposit of the full dispute amount in Court, which was computed at a staggering Kshs. 5, 063,713. He was not interested in prosecuting the Claim, but waited to pounce on the Respondent, a Chinese national, against whom warrants of arrest had irregularly been obtained by the Claimant.
10. The Claim cannot be reinstated. It was filed way back in 2011. The Claimant squandered 11 years placed at his disposal by the Court, to prosecute his Claim. It would be in violation of the constitutional principle of expeditious and fair administration of justice, to revive the Claim, and require the Respondent to defend the Claim after 11 years of its presentation in Court.

**It is ordered: -**

- a. The Application filed by the Claimant dated 5<sup>th</sup> May 2022 is declined.
- b. No order on the costs of the Application.
- c. The files shall be marked as closed.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 29TH DAY OF SEPTEMBER 2022.**

**JAMES RIKA**

**JUDGE**

