



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR**

**RELATIONS COURT AT NAIROBI**

**CAUSE NUMBER 437 OF 2018**

**BETWEEN**

**ANTHONY NJUGUNA.....CLAIMANT**

**VERSUS**

**1. AFRI-CHINA INTERNATIONAL CO. LTD**

**2. ZHENG MIAO GUO.....RESPONDENT**

**RULING**

1. In their application dated 3<sup>rd</sup> March 2020, the Respondents seek an order that the Claim filed herein, is dismissed for want of prosecution. The Respondents state that the Claimant has not taken active steps to prosecute the Claim since the matter was certified ripe for hearing, on 28<sup>th</sup> January 2019. The Respondents rely on the Affidavit of the 2<sup>nd</sup> Respondent, sworn on 3<sup>rd</sup> March 2020.

2. The Claimant opposes the Application, relying on the Grounds of Opposition filed on 29<sup>th</sup> June 2020, and the Affidavit of his Counsel Kimwere Josphat, sworn on 17<sup>th</sup> June 2020. He states that the record does not reflect he has failed to prosecute. The Application is frivolous and in abuse of the court process. It is the Respondents who have been frustrating prosecution of the Claim. The Counsel for the Claimant outlines steps taken in prosecution of the Claim, and explains further, that his Client was charged in a criminal case and convicted of forging some employment documents, which are part of his bundle of documents in the Claim.

**The Court Finds: -**

3. The Claim was filed on 28<sup>th</sup> March 2018.

4. The Claimant has shown, and the record supports him, that he has actively sought to prosecute the Claim. In very year from 2018, through 2020, the active steps were taken to prosecute. The Court notes that Parties were simultaneously engaged in a criminal case, which has culminated in conviction of the Claimant for forgery of employment documents.

5. The Court takes judicial notice that the year 2020 has been defined by a pandemic, the novel coronavirus. It has been the year of lockdowns and physical disengagement. Public Institutions and Private Businesses have largely scaled down their activities. Judicial service has been limited. Although this has not been raised by the Parties, the Court thinks it is a relevant consideration. The Court should be slow in finding litigants to have failed to prosecute their matters, while the Court itself is not rendering judicial service at normal capacity.

6. Lastly, it is noted that the Claimant was employed by the Respondents, according to his Pleadings, as a Manager. He performed this role at Embu, Meru, Nyeri and Murang'a [ commonly part of the counties known as Mt. Kenya Region]. The Claimant is a resident of Sabasaba, Murang'a County. He should not be litigating at Nairobi. The dispute bears closest connecting factors with the E&LRC Nyeri.

IT IS ORDERED: -

***a. Respondents' Application dated 3<sup>rd</sup> March 2020 is declined, with no order on the costs.***

***b. The Claim is hereby transferred to the E&LRC at Nyeri.***

**Dated and delivered at Nairobi, this 18<sup>th</sup> day of February, 2021**

**James Rika**

**JUDGE**