



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT**

**AT MOMBASA**

**CAUSE NUMBER 350 OF 2013**

**BETWEEN**

**SILVESTER CHENGO.....CLAIMANT**

**VERSUS**

**HATIMI JOINERY WORKS LIMITED.....RESPONDENT**

*Rika J*

Court Assistant: Benjamin Kombe

Hezron Gekonde & Company Advocates for the Claimant

Mburu Kariuki & Company, Advocates for the Respondent

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**RULING**

1. This Claim was filed in the year 2013.
2. The Claimant seeks payment of leave, notice and wages, amounting to Kshs. 34,800. He also seeks compensation for unfair termination.
3. He has not prosecuted to completion, his small Claim, for over 6 years.
4. The Court ordered, on 4<sup>th</sup> February 2019, that the Claim is disposed of through Written Submissions, pursuant to Rule 21 of the E&LRC (Procedure) Rules 2016.
5. Parties were to file and exchange Submissions within 28 days.
6. At the end of 28 days, the Claim was mentioned on 7<sup>th</sup> March 2019.
7. None of the Parties appeared.
8. None had filed any Submissions.
9. The Court dismissed the Claim on 7<sup>th</sup> March 2019, and closed its file.
10. 2 Months later, on 10<sup>th</sup> May 2019, the Claimant filed an Application, asking the Court to reinstate his Claim.
11. The Application, supported by the Affidavit of Claimant's Advocate, Hezron Gekonde, sworn on 8<sup>th</sup> May 2019 is the subject matter of today's Ruling.
12. Mr. Gekonde explains that on the date the Claim was slated for mention on 7<sup>th</sup> march 2019, he was held up at the ELC in Mombasa.

13. There is no explanation why he did not instruct another Advocate to hold his brief.
14. There is no explanation why the Parties did not file Submissions, within the reasonable time of 28 days given by the Court, such as would have enabled the Court to proceed to prepare Judgment, even in the absence of the Parties on 7<sup>th</sup> March 2019.
15. The Court must be able to regulate and manage its proceedings in accordance with the E&LRC Act, and the Procedural Rules made under this Act.
16. Parties on their part, shall assist the Court to further the principal objective of the E&LRC Act, and to this effect, participate in the proceedings of the Court, and to comply with directions and orders of the Court, as required under Section 3 of E&LRC Act.
17. The Judiciary has in place a policy of expeditious disposal of Cases which is within the knowledge of both Parties. This Claim is one of the very few Claims, 5 years and older, which was still pending in this Court, as of the year 2019.
18. The Court declines to re-open this Claim.

IT IS ORDERED:-

**a. Claimant's application filed on 10<sup>th</sup> May 2019 is rejected with no order on the costs.**

**b. File is closed.**

**Dated and delivered at Mombasa this 5<sup>th</sup> day of December 2019.**

**James Rika**

**Judge**