



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT KISUMU

MISCELLANEOUS APPLICATION NO. E055 OF 2025

IN THE MATTER OF ADOPTION AND ENFORCEMENT OF
AWARD UNDER THE WORK INJURY BENEFITS ACT, 2007

KENNEDY

MARTIN

BAKER.....**APPLICANT**

VERSUS

MINI BAKERIES (NAIROBI) LTD.....

.....**RESPONDENT**

RULING

1. The Applicant has moved this Court through a notice of motion dated 12th August 2025 seeking the adoption of the Director's award of 30th September 2017 as a judgment of

this Court. He further seeks entry of judgment against the Respondent for Kshs. 1,573,328/- together with interest from 9th November 2017 until payment in full, any other appropriate orders, and costs. The application is supported by his sworn affidavit in which the Applicant explains that he sustained injuries while working for the Respondent on 19th December 2015. Following the accident, the Director assessed his compensation under WIBA at Kshs. 1,573,328/-. Out of this amount, the Respondent has only paid Kshs. 349,121/-. He states that despite issuing several reminders, the Respondent has failed, neglected, or refused to settle the outstanding balance.

2. In further support of the application, the Applicant has annexed: treatment notes from various hospitals; DOSH/WIBA/1 form and a work injury evaluation clinic report showing he reported the accident and was assessed to have suffered 80% incapacity; DOSH/WIBA/4 form notifying the Respondent of the assessment; DOSH/WIBA/7 confirming receipt of partial payment; pleadings and judgment in Busia CMCC No. 98 of 2018, where his attempt to enforce payment

was declined for lack of jurisdiction; and a letter from the Director advising him to seek execution before this Court. The Applicant maintains that the Respondent's failure to pay the balance has caused him continuing pain and suffering, as the injury has significantly diminished his capacity to earn a living.

3. The Respondent opposed the application by filing grounds of opposition and a replying affidavit dated 22nd October 2025. It contends that the application amounts to an abuse of the court process because this Court lacks jurisdiction. It further asserts that the Applicant has not demonstrated compliance with the procedures under WIBA and that the application offends section 90 of the Employment Act, having been filed seven years after the award. According to the Respondent, the delay is inordinate and unexplained and cannot be excused. It further argues that the Court lacks jurisdiction to extend time and that entertaining the application would create a dangerous precedent that encourages disregard of statutory timelines. On these grounds, the Respondent urges the Court to dismiss the application with costs.

4. The Applicant filed written submissions in support of the motion, while the Respondent opted to rely on its grounds of opposition and replying affidavit.

Applicant's Submissions

5. On jurisdiction the Applicant maintains that this court is empowered to adopt and enforce the Director's award. He submits that although there was previously a lacuna, Rule 69 of the Employment and Labour Relations Court (Procedure) Rules 2024 has since clarified the position. He relies on the decision in the case of **Charles v Cheto [2025] KECA 784 (KLR)**, where the Court observed:

"As the learned Judge correctly observed, there is a lacuna in the law with regard to the procedure for enforcement of the Director's decision in that there is no express provision of the WIBA stipulating the procedure for enforcement. Be that as it may, Employment and Labour Relations Courts have aptly held that enforcement of the Director's decisions properly lies with the ELRC as the court with the jurisdiction to deal with employment and labour relations claims and for connected purposes, and as provided for

under sections 86 and 89 (formerly sections 87 and 90) of the Employment Act (Cap. 226)."

6. The Applicant further submits that the allegation of non-compliance with WIBA is unfounded. It asserts that the Respondent did not identify the specific WIBA provisions he is said to have breached, nor explain why it failed to raise an objection or lodge an appeal under sections 51 and 52 thereof. On limitation, the Applicant submits that section 90 of the Employment Act is inapplicable because the matter before the Court is not an employment dispute but an enforcement action under WIBA. Reference is made to the case of **Onyancha (suing as a dependant and legal representative of Fredrick Otieno Adumbo (deceased)) v Gogni Rajope Construction Ltd & another [2025] KEELRC 3316 (KLR)**, **Cyrus Ombuna Machina v Safaricom Ltd [2020] KEELRC 814 (KLR)**, **Naftali (suing as the legal administrator and/or representative of the estate of the late Monica Nafula Lucheli deceased) v County Government of Kakamega [2024] KEELRC 1781**, and **Bakari v Spanish Coach**

Express Ltd & another [2025] KEELRC 2351 (KLR), in which the common thread was that work-injury claims fall outside the timelines prescribed under section 90 of the Employment Act. The Applicant asserts that a Director's award under WIBA is analogous to a judgment and is therefore subject to the 12-year limitation period under section 4(4) of the Limitation of Actions Act. He maintains that even though there were other conflicting decisions in **Njuguna v Unilever Kenya Limited [2023] KEELRC 1843 (KLR)** and **Richard Akama Nyambane v ICG Maltauro Spa [2020] KEELRC 847 (KLR)** they were not binding on the court.

7. The Applicant further submits that even if limitation were applicable, the circumstances of the case did not support it. He asserts that the Respondent has raised the issue merely to avoid paying the award. He points out that he filed Busia CMCC No. 98 of 2018 on 10th April 2018, less than a year after the award, and asserts that the period during which that suit remained pending until 15th December 2023 should not be counted. He relies on **Edwin Songoroh & another v**

Amony Koech Yatich & another [2021] KEELRC 432 (KLR), which affirmed that the Magistrate's Court had jurisdiction to enforce WIBA. He draws parallels with the principles in adverse possession claims where time stops running once a party moves to assert rights citing **Joseph Gachumi Kiritu v Lawrence Munyambu Kabura [1996] eKLR**. In view of the foregoing, the Applicant's contends that the claim could not be regarded as stale as he had consistently pursued enforcement since 2018. He adds that the Respondent cannot claim prejudice because it has long been aware of and actively participated in the matter.

8. Finally, the Applicant submits that dismissing the application would reward the Respondent for failing to fulfil its duty to compensate an injured employee, contrary to the principle articulated in **Joseph Mbugua Gichanga v Co-operative Bank of Kenya Ltd [2005] eKLR**, that a party should not be allowed to retain an advantage obtained through disregard of the law. In the circumstances, the Applicant urges the Court to allow the application as prayed.

Disposition

9. The Respondent did not file submissions though its position is well set out in the replying affidavit. In determining the matter, the Court has considered the pleadings of parties, the law and submissions made. In the case before me, the Applicant seeks to enforce an award that was partly settled by the Respondent. The Court of Appeal in the case of **Charles v Cheto** (*supra*) held that this Court is the one that has jurisdiction to determine WIBA related claims. The Respondent asserts limitation in terms of section 90 of the Employment Act. Suffice to say, in the cases of **Onyancha (suing as a dependant and legal representative of Fredrick Otieno Adumbo (deceased)) v Gogni Rajope Construction Ltd & another [2025] KEELRC 3316 (KLR)**, **Cyrus Ombuna Machina v Safaricom Ltd [2020] KEELRC 814 (KLR)**, **Naftali (suing as the legal administrator and/or representative of the estate of the late Monica Nafula Lucheli deceased) v County Government of Kakamega [2024] KEELRC 1781**, and **Bakari v Spanish Coach Express Ltd & another [2025] KEELRC 2351 (KLR)** the courts held that work-injury claims fall outside the timelines prescribed under section 90 of the

Employment Act. As such the claim is not time barred as the decision of the Director of Occupational Safety and Health can be enforced as a judgment and therefore has an outer limit of 12 years.

10. The Applicant is entitled to the balance of the sum due being Kshs. 1,224,207/- which sum shall attract interest at court rates from the date of filing the Miscellaneous Cause herein till payment in full. The sum to be paid forthwith. Costs of the application are also granted to the Applicant.

Orders accordingly.

Dated and delivered at Kisumu this 15th day of

December 2025

**Nzioki wa Makau, MCI Arb.
JUDGE**