

REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT
MOMBASA**

MISC. APPLICATION NO. E135 OF 2025

SIMON MURIUKI JUMA APPLICANT

VERSUS

RED MAMBA AGENCIES LIMITED 1ST RESPONDENT

CIC GENERAL INSURANCE LIMITED 2ND RESPONDENT

RULING

The ruling relates to the Notice of Preliminary Objections dated 8 December 2025 filed by the 1st respondent, Red Mamba Agencies Limited. The objections are that the applicant's notice of motion dated 24 November 2025 should be dismissed on the grounds that it is incompetent and statute-barred, having been filed after more than 8 years outside the limitation period under section 90 of the Employment Act (the Act). The Act requires all suits to be filed within 3 years from the date the cause of action arose.

Other objections are that the cause of action accrued on 19 May 2017 when the Director of Occupational Safety and Health Services (DOSHS) assessed the award of compensation. The award due under section 26(4) of the Work Injury Benefits Act (WIBA) should be addressed within 3 years under section 90 of the Act, which lapsed on 18 August 2020.

The 1st respondent further objects to the application on the grounds that under WIBA, the Occupational Safety and Health Act and the Employment and Labour Relations Court (Procedure) Rules, no provision excludes the statutory limiting period of 3 years. All matters should be filed before the court within the mandatory provisions of section 90 of the Act.

The 1st respondent asserts that in this case, under the rule in **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA**, the objections should be allowed.

The 1st respondent submitted that the applicant was injured at work on 10 September 2015 and his application was filed on 24 November 2025. This is over 10 years since, which is outside the limitation period under section 90 of the Act. Under section 26(4) of WIBA, such

an application is time-barred. Under DOSH, the enforcement should be within 12 months. Under the Act, rights should be secured within 3 years.

The 1st respondent submitted that under section 7(1) of WIBA, an employer is required to have insurance for work injury. The demand notice to pay in this case should have been issued against the 2nd respondent.

The application being time-barred should be dismissed with costs.

The applicant submitted that the motions for WIBA are not tied to the provisions of section 90 of the Act. Each regime is under its own application, particularly under WIBA. The application dated 24 November 2025 is for the enforcement of a statutory right not affected under section 90 of the Act.

In **James Wanje Kazungu v Kenya Ports Authority, ELRC Misc. Application No. E002 of 2025**, the court held that Claims arising from work injury must be addressed within the provisions of WIBA. Where the cause of action accrued, the parties were bound by WIBA provisions, not the Employment Act.

in **Bakari v Spanish Coach Express Limited & another [2025] KEELRC 2351 (KLR)**, the court held that upon the DOSH award, where there are no objections or an appeal, it fully determines the rights of the parties, thereby assuming the character of a judgment. The Limitation of Actions Act and the Employment Act provisions do not apply.

Determination

The issue in the objections by the 1st respondent concerns the application of time under section 90 of the Act, which allows a party in employment to file its case within 3 years or 12 months in a continuing injury case. However, the applicant's application dated 24 November 2025 is based on WIBA, not the Employment Act.

Awards under DOSH are based on the work injury-related claims under WIBA. Indeed, under the WIBA, there is no enforcement mechanism, which is now addressed under Rule 69 of the Employment and Labour Relations Court (Procedure) Rules, which allow for the adoption of the DOSH award as the judgment of the court.

In the case of **Naftali (sung as the Legal Administrator and representative of the Estate of the late Monica Nafula Lucheli – deceased) v County Government of Kakamega**,

Misc. In Appl. E001 of 2024, the court held that the 3-year limitation period under section 89 [section 90] of the Employment Act does not apply to an application premised on WIBA.

In **Malaba v Securex Agencies (K) Limited Misc. Appl. E166 of 2023**, the court held that the respondent acknowledged the debt as the employer by accepting the DOSH award. For purposes of Section 90 of the Act, the refusal to pay such debt was recoverable in proceedings such as herein.

In this case, objections based on the provisions of section 90 of the Act or section 26(4) of WIBA concerning the enforcement of the DOSH award herein are without merit and are hereby dismissed. Costs to the applicant.

Delivered in open court at Mombasa, this 16th day of December 2025

M. MBARŪ
JUDGE

In the presence of:
Court Assistant:

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