

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT
MOMBASA

MISC. APPLICATION NO. E124 OF 2025

BEYONCE MUSENYA MWANGANGI

[Suing for and on behalf of David Mavuti Ngonzi – deceased] APPLICANT

VERSUS

KYEGA HIULIERS (K) LIMITED 1ST RESPONDENT

APA INSURANCE COMPANY LIMITED 2ND RESPONDENT

RULING

The ruling herein relates to the notice of Preliminary Objections dated 10 December 2025 filed by the 1st respondent, Kyoga Hauliers (K) Limited. The objection is that the entire proceedings are in contravention of section 4(1)(d) of the Limitation of Actions Act.

The 1st respondent submitted that section 4(1)(d) of the Limitation of Actions Act does not allow suits for recovery of dues beyond 6 years. The award of the Director of Occupational Safety and Health Services (DOSHS) was issued on 14 January 2019. The instant application was filed on 8 October 2025, after 6 years had lapsed. These proceedings are filed out of time, and this denies the court jurisdiction to hear and determine the matter.

The 1st respondent submitted that the court should terminate these proceedings by dismissing the application dated 28 October 2025 with costs to the 1st respondent.

The applicant submitted that the question of time is addressed under section 16 of the Work Injury Benefits Act (WIBA). A claim based on work-related injury should be addressed under the provisions of WIBA, and therefore, the 1st respondent cannot apply the provisions of the Limitation of Actions 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 DOSHS 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 1st respondent has invoked the provisions of section 4(1)(d) of the Limitation of Actions Act to assert that the application herein is filed outside the 6-year limitation period and hence should be struck out with costs.

The applicant filed an application dated 28 October 2025 seeking to enforce a DOSH award issued on 14 January 2019 upon the fatal work injury to the deceased employee, David Mavuti Ngozi. The DOSH award is premised on the provisions of WIBA.

Unlike commercial disputes or breach of contract claims, which are regulated under section 4(1)(d) of the Limitation of Actions Act, work-related disputes are regulated explicitly under WIBA. See Kosgei v Wells Fargo Limited [2024] KEELRC 2731 (KLR).

Under the WIBA, there is no enforcement mechanism, which is now addressed by Rule 69 of the Employment and Labour Relations Court (Procedure) Rules, which allows the DOSH award to be adopted as the court's judgment.

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. The foundational objectives under WIBA are fundamentally different and separate from those under the Limitation of Actions Act.

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 submitting the DOSH form.

For purposes of Section 4(1)(d) of the Limitation of Actions Act, these provisions do not apply in this case. The WIBA is the substantive legislation addressing work-related injury claims. Objections herein are without merit.

In this case, objections based on the provisions of section 4(1)(d) of the Limitation of Actions Act on time limitation herein are without merit and are hereby dismissed. Costs to the applicant.

Delivered in open court at Mombasa, this 22nd day of January 2026.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant:

..... and