

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT IN MOMBASA

MISC. APPLICATION NO. E088 OF 2025

NZULA KIASYO MWENDA

REBECCA WANJA MWENDA [Suing for and on behalf of Simon Simon Maina Mwenda - deceased] APPLICANTS

VERSUS

COAST PROFESSIONAL FREIGHTERS LIMITED 1ST RESPONDENT

KENYA ORIENT INSURANCE LIMITED 2ND RESPONDENT

RULING

The ruling herein relates to the 2ND respondent's Notice of Preliminary Objections dated 21 October 2025.

The objections are that the claim founded on contract must be brought within 6 years of the cause of action arising, and that the claim against the 2nd respondent is thus time-barred. The court's jurisdiction under the law does not override an enforcement award issued by the Director of Occupational Safety and Health Services. The appellant court under the Work Injury Act (WIBA) cannot be the same court which enforces the award by the director. The only enforcement this court can exercise is upon the judgment arising out of appeals received by the court under section 52(2) of the WIBA.

Further, section 26(6) of WIBA provides for criminal sanctions as a remedy when the employer does not make good the award of the Director. This court is a civil court and not a criminal court, and hence the pleadings by the claimant are incompetent.

The application filed Grounds of Opposition, stating that the objections by the 2nd respondent constitute an abuse of the court process. The Court of Appeal has affirmed that the court has jurisdiction to enforce the Director's award. Additionally, Rule 69 of the Employment and Labour Relations Court (Procedure) Rules has sufficiently addressed the question of the enforcement of the Director's awards, hence the matter is moot.

The applicant further objects to the 2nd respondent on the basis that the court has addressed the question of limitation in terms of the enforcement of the Director's awards. The limitations under section 90 of the Employment Act do not apply to WIBA awards. The reasons advanced by

the 2nd respondent in the preliminary objections lack merit and should be dismissed with costs.

The parties attended and made oral submissions.

The 2nd respondent submitted that the WIBA has no express provisions on enforcement. Article 162(2) of the Constitution does not create a legal mechanism for the enforcement of the Director's awards under WIBA.

Section 52 of WIBA only allows appeals to the court. In the case of [Kenya Tea Growers Association & 2 others v The National Social Security Fund Board of Trustees & 13 others \[2024\] KESC 3 \(KLR\)](#), the Supreme Court of Kenya held that jurisdiction means the authority to act under the law. Section 16 of WIBA gives jurisdiction to the Director; hence, it denies the court jurisdiction to enforce awards arising under the Act.

The 2nd respondent submitted that the Court of Appeal, in the case of *The Attorney General v Law Society of Kenya* [2017] eKLR, held that section 16 of WIBA reserves the enforcement mechanism of the Director's award to the procedures set out under the Act. Where the employer fails to comply, section 26 of the WIBA provides only for criminal sanctions, not a civil claim.

The applicants submitted that, under Rule 69 of the Employment and Labour Relations Court (Procedure) Rules, the court may enforce the Director's awards. The application of section 90 of the Employment Act does not apply to claims under the WIBA, as alleged, as held in **James Wanje Kazugu 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 Director's 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 2nd respondent raises objections about the applicants' claim to enforce the Director's award herein issued on 14 October 2019 on the basis that 6 years have since lapsed without action. Hence, under the law of contract, such a claim is time-barred.

Under WIBA, there is no time bar. Once the Director has issued the award, the employer or the insurer has a legal duty to pay. The sanctions under section 26 of the WIBA indeed apply where the labour officer should address and prosecute the employer who fails to address

workplace injury. However, such prosecutions lie constitutionally with the Director of Public Prosecutions, who has such powers under the constitution.

An employee who suffers a work injury has recourse to the court for enforcement of the Director's award, as held in **Charles v Cheto Civil Appeal No. E046 of 2022**.

Indeed, 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 adoption of the Director's award 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.

In **Malaba v Securex Agencies (K) Limited Misc. Appl. E166 of 2023**, the court held that the respondent acknowledged the debt as the employer. Such acceptance created the liability to pay the director's award. For purposes of Section 90 of the Employment Act, the time limitations therein do not apply in claims premised under the WIBA. The refusal to pay such debt was recoverable in proceedings such as herein.

Hence, under **Charles v Cheto Civil Appeal No. E046 of 2022**, the principles outlined therein are that the forum for the enforcement of the director's award is the court. Save for the appeal jurisdiction under section 52 of the WIBA, upon refusal to pay, the only court that has power over employment and labour relations disputes is the court.

Where there is an appeal, it has its own foundation, and the court must address it on the merits. Non-payment of a work injury claim cannot wait for criminal sanctions under section 26, as alleged by the 2nd respondent.

The objections herein by the 2nd respondent are without merit and are hereby dismissed. The applicants seek to forgo costs. Save, for frivolous applications such as herein, costs should issue. These are assessed under the provisions of section 12(4) of the Employment and Labour Relations Court Act, read together with Rule 73 of the Employment and Labour Relations Court (Procedure) Rules, to the sum of Ksh. 50,000 to be paid to the applicants by the 2nd respondent.

Delivered in open court at Mombasa, this 26th day of January 2026.

M. MBARÛ

JUDGE

In the presence of:

Court Assistant:

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