

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

ELRC MISC/E032/2025

DALMAS KIPROPAPPLICANT

VS

BADAR HARDWARE LTD.....RESPONDENT

RULING

1. By an application dated 6th March 2025, the Applicant prayed for orders;
 - i. That the Honourable Court be pleased to adopt as judgment of the Court, the assessment/award of the Director of Occupational Safety and Health Services, Mombasa, made on 28th October, 2019.
 - ii. A Decree to issue for;
 - (a) The sum of Kshs. 78,400/- being the Director's award/assessment made on 28th October 2019; and
 - III. Costs of this Application be awarded to the Applicant.
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2. The Applicant sustained work-related injuries on 10 July 2019 whilst employed by the Respondent as a casual labourer. The incident was reported to the Directorate of Occupational Safety and Health Services (DOSHS) in Mombasa via DOSHS Form I. Following the assessment, on 28 October 2019, DOSHS issued WIBA Form 4, instructing the Respondent to compensate the Applicant KShs. 78,400.
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3. Under the Work Injury Benefits Act (WIBA), the Respondent was required to pay the assessed amount within 90 days, after which the Director would remit the

payment to the Applicant within 30 days. If dissatisfied with the assessment, the Respondent had 60 days to lodge an objection with the Director or appeal to the Court.

4. Although notified of the assessment on 28 October 2019, the Respondent neither objected nor appealed. The Director subsequently issued demand letters dated 20 July 2020 and 14 September 2022, demanding payment or an explanation within 7 days, but the Respondent failed to respond.

5. The Respondent has failed to settle the award, showing an unwillingness to comply with the statutory requirements under Section 26(4) of WIBA, which requires payment within 90 days. The Applicant contends that this failure breaches his constitutional rights to equal protection of the law (Article 27) and fair labour practices (Article 41).

6. The Applicant therefore seeks the Court's intervention, asserting that he had a legitimate expectation that the compensation would be paid within the prescribed timelines. He prays that the application be heard on a priority basis and that a decree be issued for the payment of the assessed amount.

Replying Affidavit dated 6th March, 2025

7. The Respondent, through Omar Ahmed Yussuf, the Managing Director of the Respondent, confirmed that the Applicant was a casual employee and was covered under the Respondent's Work Injury Benefits Act (WIBA) insurance scheme, meaning any compensation claim would have been payable by the Respondent's insurer.

8. The deponent states he was unaware of the Applicant's work injury but believes that timely service of the claim would have resulted in the insurer managing and settling it.

9. The Respondent asserts that enforcement of awards under the Occupational Safety and Health framework is subject to statutory limitation periods, particularly Section 90 of the Employment Act, 2007, which limits employment-related claims.
10. The Respondent further states that the statutory timelines are mandatory and absolute, and therefore the present application is belated and filed after the expiry of the statutory limitation period.
11. The deponent indicates that he is not aware whether a formal demand for compensation was served upon the Respondent by the Ministry of Labour and Social Protection (Directorate of Occupational Safety and Health Services), though he has been shown a letter dated 20th July 2020 from the County Occupational Health and Safety Officer.
12. The instant application lacks an explanation for the delay, and the period between 28th October 2019 (date of the award) and 6th March 2025 (date of filing) has not been justified.
13. The Respondent therefore contends that the award issued on 28th October 2019 should have been enforced on or before 27th October 2022, and that the application filed on 6th March 2025 is statute-barred.
14. Consequently, the Respondent opposes the application and urges the Court to dismiss it for being filed outside the statutory time limit.

The preliminary objection

15. By a Notice of Preliminary Objection, the Respondent attacked the Applicant's application on two grounds;
 - a) That the application and claim therein are time-barred under the provisions of section 90 of the Employment Act.
 - b) That the Court does not have jurisdiction to enlarge the time for enforcement of the Director's Award made on 28th October 2019.

Respondent's Submissions on the Preliminary Objection dated 24/03/2025

16. The Respondent supports its Notice of Preliminary Objection dated 24th March 2025, arguing that the Applicant's motion seeking enforcement of the Director of Occupational Safety and Health's award was statute-barred under Section 90 of the Employment Act, 2007. It is contended that the Applicant, a former casual employee, allegedly sustained a workplace injury on 10th July 2019, and an award was subsequently assessed by the Director on 28th October 2019, but the Applicant failed to pursue enforcement until March 2025.
17. The Respondent further submits that the three-year limitation period under Section 90 began running from the date of the Director's award and that enforcement proceedings ought to have been instituted within that statutory period. In support of this position, reliance was placed on *Richard Akama Nyambane v ICG Maltauro SPA* [2020] eKLR.
18. The Respondent further relies on *Muiruri v China Gansu International Corporation for Economic and Technical Cooperation (K) Ltd* (Miscellaneous Application E080 of 2023) [2024] KEELRC 380 (KLR).
19. It is further submitted that an employer has 90 days to settle the Director's award, after which a cause of action arises for enforcement. Applying that reasoning, the Respondent argued that the award dated 28th October 2019 ought to have been settled by 29th January 2020, meaning the cause of action accrued around 30th January 2020, and the three-year limitation period expired on or about 30th January 2023.
20. The Respondent also argued that courts do not have the authority to extend statutory limitation periods, citing *APA Insurance Company v Vincent Nthuka* [2018] eKLR and *Dhanesvar V Mehta v Manilal M Shah* [1965] EA 321.
21. In conclusion, the Respondent argued that the application filed in March 2025 was brought well outside the statutory limitation period and that the court therefore lacks jurisdiction to entertain the claim or enlarge time. The Respondent

consequently urged the court to uphold the Preliminary Objection dated 24th March 2025 and dismiss the application with costs.

Applicant's Submissions to the Respondent's Preliminary Objection dated 24 March 2025 and Application dated 6th March 2025

22. The Applicant argues that while the Employment Act sets a three-year statute of limitations, the Work Injury Benefits Act (WIBA) does not specify a time limit for enforcing DOSH awards. Without a statutory deadline, the Court can use its inherent jurisdiction to prevent employees from losing remedies due to procedural technicalities.

23. The Applicant further submits that the Employment and Labour Relations Court (ELRC) has jurisdiction to enforce DOSH awards under Article 162(2) of the Constitution and Section 12 of the ELRC Act, 2011, as such enforcement falls within the broader framework of employment and labour relations disputes.

24. In support of this position, reliance was placed on *Ng'ang'a v County Government of Nakuru* (Misc. Civil Application E007 of 2022) [2023] KEELRC 789 (KLR).

25. It was further submitted that the Director's award issued on 28th October 2019 was made in the exercise of a quasi-judicial function, and that the Respondent did not lodge any appeal or objection against the award.

26. The Applicant argued that the Preliminary Objection is without merit and urged the Court to dismiss it and approve the application dated 6th March 2025 with costs.

Issues and determination

- i. Whether the claim is time-barred pursuant to section 90 of the Act;
- ii. Whether the award under the Work Injury Benefits Act, 2007, following assessment by the Directorate of Occupational Safety and Health Services (DOSHS), is payable as claimed;
- iii. Who should pay the costs?

27. Undoubtedly, the Employment Act 2007 provides a time limit within which proceedings related to disputes arising from the provisions of the Employment Act or a contract of employment must be initiated. The proceedings must be initiated within three years of the accrual of the cause of action, unless the dispute concerns a continuing injury.
28. The question this Court must resolve is whether section 89 of the Employment Act applies to applications seeking a facilitative order for enforcing an award from the Director of Occupational Health and Safety Services, and if so, how that impacts the current application. While the Respondent maintains that the time limit set out in the provision applies, the Applicant argues otherwise.
29. Certainly, the Work Injury Benefits Act does not stipulate the enforcement of the Director's award if the employer refuses to comply with the Director's demand to settle it within the statutory period or at any time. However, judicial precedent has established that enforcement can now be achieved through a court-issued facilitative order.
30. It is important to note at this point that, just as there is no explicit enforcement mechanism for the Director's award in the Work Injury Benefits Act, likewise, there is no provision specifying the timeframe within which proceedings for a facilitative order should be initiated. Because of this lacuna, two schools of thought have emerged. That which posits that matters of injury at the workplace and compensation thereof are matters that flow from a contract of employment, and as such, the limitation imposed by section 89 is applicable.
31. The other school of thought is that which argues that the Work Injury Benefits Act is a separate piece of legislation from the Employment Act, 2007. It contends that if the legislature had intended for the provisions of the Employment Act to apply to matters under the Work Injury Benefits Act, it would have been straightforward for the legislature to explicitly state so. This is the school of thought to which this Court belongs.

32. **Section 89 of the Employment Act provides;**

“Notwithstanding the provisions of Section 4[1] of the Limitation of Actions Act [Cap 22], no civil action or proceedings based or arising out of this Act or contract of service, in general, shall lie or be instituted unless it is commenced within three years next after the act, neglect, or default complained of or in continuing injury or damage within twelve months next after the ceasation thereof.”

From any perspective this provision is examined, it does not envisage the initiation of proceedings to enforce an award or verdict resulting from proceedings under the Work Injury Benefits Act. 33. In *Karanja v Rift Valley Machinery Services* [2024] KEELRC 1617[KLR], this Court stated; “In my considered view, once the award of the Director is adopted as a judgment of the court for enforcement purposes, the applicability of section 4[4] of the Limitation of Actions Act, which has not been ousted by section 90 of the Employment Act, sets in. The subsection provides; “ An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or [where the judgment or a subsequent order directs any payment or delivery of any property to be made at a certain date or at recurring periods] the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.”

34. By reason of the premises, I find the preliminary objection misplaced. I decline to uphold the same.

35. Having found as I have hereinabove on the preliminary objection, I see no compelling reason why I should not adopt the verdict of the Director, which, in my view, hasn't been sufficiently assailed by the Respondent. Consequently, I hereby allow the Applicant's application dated 6th March 2025. Interest on the sum awarded by the Director shall run from the date of filing this application till full payment.

Read, Signed and Delivered this 26th Day of February 2026.

SIGNED
JUSTICE OCHARO KEBIRA