

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

MISC. APPLICATION NO. E408 OF 2025

(Before Hon. Lady Justice Agnes Kitiku Nzei)

DANCAN MUSYOKA MWANIKIAPPLICANT

VERSUS

**KENYA BUILDERS & CONCRETE
COMPANY LIMITED.....RESPONDENT**

RULING

1. The application before me for determination is the Applicant's Notice of Motion dated **21st October, 2025**. The Applicant seeks the following Orders:-

- (a) *That the compensation of **Kshs.256,986.60** assessed by the Director of Occupational Safety and Health Services to the Applicant (**sic**) herein be adopted as a Judgment of this Court.*
- (b) *That a decree be issued in accordance with the assessment of the Director Occupational Safety*

and Health for the sum of **Kshs.256,986.60**, with interest at 14% per annum from 25/10/2021.

(c) That costs of the application be paid by the Respondent.

2. The application is predicated on the Applicant's supporting affidavit sworn on 21st October, 2025. It is deponed in the said supporting affidavit:-

(a) that the Applicant was on 19th January, 2021 cut by a machine motor chain while working for the Respondent, which resulted to an open wound injury of his ring and middle fingers of the right hand.

(b) that the Applicant was treated at different hospitals, and was examined by **Dr. M. Alfons** of Coptic Hospital, whereupon **DOSH FORM 1** was filled.

(c) that the matter was reported to the Director of Occupational Safety and Health Services, and **DOSH/WIBA FORM 4** was duly filled. That the Applicant's permanent incapacity was assessed at

12%, and compensation payable to him was assessed at **Kshs.256,986.60**.

(d) that the Director sent out a demand to the Respondent for payment on **25th October, 2021**, but the Respondent adamantly refused to pay the aforesaid sum of **Kshs.256,986.60**; though he ought to have paid within **90 days** of the claim under **Section 26(4) of the Work Injury Benefits Act**.

(e) that ninety days have lapsed since the demand, and that the Respondent did **not** prefer an appeal against the Director's assessment.

3. Documents annexed to the supporting affidavit include copies of **DOSH FORM 1, DOSH/WIBA FORM 4/demand for payment dated 25th October, 2021**, and another demand notice by Applicant's Advocates dated **1st October, 2025**.

4. The Respondent did not file response to the application, though shown to have been served. The application is, therefore, unopposed.

5. I have noted from the aforementioned documents filed herein, and particularly **DOSH/WIBA/FORM 4**, that the Director of Occupational Safety and Health Services (**Director**) assessed the compensation payable to the Claimant (**Kshs.256,986.60**) on **25th October, 2021**, and sent out a demand to the Respondent for payment of the assessed sum on the aforesaid date (**25th October, 2021**). The demand is contained in the DOSH/WIBA 4, which was addressed to the Respondent (the employer).

6. Section 26(4) provides that:-

“(4) An employer or insurer against whom a claim for compensation is lodged by the Director under this Section, shall settle the claim within ninety days of lodging of the claim.”

7. Failure by the Respondent (**the employer**) to pay the **assessed and demanded sum** within the statutory period of **ninety days amounted to an offence pursuant to Section 26(6) of WIBA** and, vested a civil cause of

action on the Applicant regarding the assessed sum.

The said sum thus became the Applicant's right arising from the employer-employee relationship (contract of service) between the Applicant and the Respondent. The present enforcement suit/application, therefore, ought to have been filed **within three (3) years** from the date of expiry of the **ninety days' period** given to the Respondent by the Director to pay the assessed sum.

8. The aforesaid ninety days ran from **25th October, 2021** and lapsed on **25th January, 2022**. The limitation period for filing suit (**three years**) started running as from **26th January, 2022**. **Section 89 (formerly Section 90) of the Employment Act** provides as follows:-

“Notwithstanding the provisions of Section 4(1) of the Limitation of Actions Act, no civil action or proceedings based or arising out of this Act or a 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 or in the case of continuing injury or

damage within twelve months next after the cessation thereof.”

9. The present suit/application was filed on **24th October, 2025, approximately three years and ten months from the date the cause of action arose.** The suit/application herein was clearly **filed outside the time limited by statute** for its filing and is, therefore, statute barred.
10. Although the orders sought by the Applicant would have been merited had the application herein been filed **within** the time prescribed by statute, this Court's hands are now tied by the statute as it has no jurisdiction to grant orders based on a statute-barred suit.
11. In view of all the foregoing, the Notice of Motion dated 21st October, 2025 is hereby struck-off for being statute-barred, with no order as to costs.
12. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS
17TH DAY OF APRIL 2026**

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Mr. Masua for the Applicant

No appearance for the Respondent

ORIGINAL