

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

**MISCELLANEOUS APPLICATION NO. E511 OF 2025**

*(Before Hon. Lady Justice Agnes Kitiku Nzei)*

**HESBON MARIITA OMOKE ..... APPLICANT**

*VERSUS*

**CHINA NATIONAL ERO-TECHNOLOGY  
INTERNATIONAL ENGINEERING CORPORATION  
..... RESPONDENT**

**RULING**

1. The application before me for determination is the Applicant's Notice of Motion dated 10<sup>th</sup> December, 2025.

The Applicant seeks the following Orders:-

- (a) That the compensation of **Kshs.265,286.40** assessed by the Director of Occupational Safety and Health Services to the Applicant (**sic**) herein be adopted as a Judgment of the Court.
- (b) That a decree be issued in accordance with the assessment of the Director of Occupational Safety

and Health Services for the sum of **Kshs.265,286.40**, with interest at 14% per annum from 17<sup>th</sup> March, 2021.

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

2. The application is based on the supporting affidavit of the Applicant sworn on 10<sup>th</sup> December, 2025. It is deponed in the said supporting affidavit, **inter-alia**:-

(a) that the Applicant was employed by the Respondent as a carpenter, and on 24<sup>th</sup> June, 2019 sustained a left shoulder dislocation injury while on duty.

(b) that the Claimant was treated in different hospitals, and was later examined at Kenyatta National Hospital.

(c) that the matter was reported to the Director Occupational Safety and Health Services, and a **DOSH/WIBA 4** was duly filled, with his permanent incapacity being assessed at **15%** and the compensation payable at **Kshs.265,286.40**.

(d) that the Director sent a demand to the Respondent for payment on **17<sup>th</sup> March, 2021**, but the Respondent refused to pay the assessed sum.

(e) that the Applicant's Advocates sent [another] demand dated 8<sup>th</sup> December, 2025, but the Respondent refused to pay the aforesaid assessed sum.

3. Documents annexed to the supporting affidavit include copies of the Applicant's **National Identification Card, DOSH/FORM 1 duly filled by the Respondent, a letter by Kenyatta National Hospital to the Respondent (dated 4<sup>th</sup> March, 2021)** and **DOSH/WIBA/FORM 4 dated 17<sup>th</sup> March, 2021**, among other documents; which include a demand by the Applicant's Advocates (dated 8<sup>th</sup> December, 2025).
4. The application is not opposed, though the Respondent is shown to have been served.

5. I have noted from the aforementioned documents filed with the application that the compensation payable to the Applicant was assessed by the Director of Occupational Safety and Health Services (**Director**) on **17<sup>th</sup> March, 2021**, and that a demand for payment thereof was sent out to the Respondent by the Director on even date. The demand is contained in the DOSH/WIBA 4, which is addressed to the Respondent. Pursuant to **Section 26(4) of the Work Injury Benefits Act (WIBA)**, the assessed compensation was payable by the Respondent (the employer) **within 90 days from the date payment was demanded by the Director**. The Applicant has deponed that payment was not made.

6. Failure by the Respondent to pay **within 90 days of the said demand** amounted to an offence pursuant to Section 26(6) of the Act, and gave rise to a civil cause of action on the part of the Applicant. It is now **approximately five (5) years** since the said civil cause of action arose. The claim herein, **being one arising from a contract of service/employment between the Applicant and the Respondent**, ought to have been filed in Court within three

years from the date of default by the Respondent to pay, pursuant to **Section 89 (formerly Section 90) of the Employment Act** which 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.”***

7. The application herein was filed **approximately five (5) years** after the date of default by the Respondent, and is therefore **statute barred**. It cannot be entertained or determined by this Court. The Court has no jurisdiction to grant orders based on a statute-barred suit.
  
8. The Notice of Motion dated 10<sup>th</sup> December, 2025 is hereby struck off with no order as to costs.

9. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS**

**17<sup>TH</sup> 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