

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT**  
**NAIROBI**  
**MISC. APPLICATION NO. E274 OF 2025**

**PATRICK MWAU KIMATU .....**

**APPLICANT**

**VERSUS**

**CMC MOTORS GROUP LIMITED.....**

**RESPONDENT**

**RULING**

- 1.** This ruling relates to a Notice of Preliminary Objection by the Respondent dated 31<sup>st</sup> October, 2025.
- 2.** The Respondent's Objection is that Section 90 of the Employment Act sets strict limitation periods for employment related actions which must be filed within three years from the date of the act, neglect, or default, or within twelve months after cessation in cases of continuing injury or damage.
- 3.** The Respondent's argument is that in this case, the Director of Occupational Health and Safety issued the award subject of the Applicant's application on 18<sup>th</sup> March 2016, hence the deadline to file an application for its adoption expired on 18<sup>th</sup> March 2019.

4. It avers that since the application was filed outside this statutory period, it is time barred and should therefore be struck out with costs to the Respondent.
5. Parties were directed to canvass the objection through written submissions, and submissions were filed for both parties.

### **The Respondent's Submission**

6. The Respondent submits that under Section 90 of the Employment Act, employment related claims must be filed within three years from the date of the act or decision complained of. It argues that the compensation award herein by the Director of Occupational Safety and Health Services was issued on 18<sup>th</sup> March 2016, hence the time lapsed on 18<sup>th</sup> March 2019.
7. It is the Respondent's submission that the present application, filed on 4th August 2025, seeks adoption of that award long after the statutory deadline, rendering it time barred. The Respondent placed reliance in ***Ng'ang'a v County Government of Nakuru (Miscellaneous Civil Application E007 of 2022) 12023) KEEL RC 789 (KLR) (29 March 2023)***, where the court held that an unchallenged award by the Director becomes a debt due and payable arising from an employment relationship and may be enforced through court proceedings.
8. The Respondent submits that an award made by the Director of Occupational Safety and Health Services is in

resolution of an employment dispute and subject to the provisions of the Employment Act.

**9.** The Respondent further submits that the Applicant confirmed that the Director of Occupational Safety and Health Services issued the award on 18<sup>th</sup> March 2016, and has produced the same as evidence, and it follows that the cause of action accrued on 18<sup>th</sup> March 2016, being the date when the right to enforce the award arose.

**10.** The Respondent states that the Applicant filed the application for adoption of the Director's award on 4<sup>th</sup> August 2025, more than 9 years after the cause of action accrued, and therefore, the same is time barred.

**11.** The Respondent finally urges the court to dismiss the application and allow the preliminary objection dated 31<sup>st</sup> October 2025 as prayed.

### **The Applicant's Submissions**

**12.** The Applicant submits that Justice Mbaru in ***Tuma v Red Mamba Agencies Limited*** held that applications for adoption of a Director's award are governed by the Work Injury Benefits Act (WIBA), not the Employment Act. It is the Applicant's further submission that such applications are specifically provided for under Rule 69 of the Employment and Labour Relations Court (Procedure) Rules, which sets the procedure for adopting DOSHS awards, and that the

objection relying on Section 90 of the Employment Act are misplaced in the context of enforcing a DOSHS award.

**13.**The Applicant submits that enforcement of a DOSHS award is a statutory process under WIBA, not a contractual employment claim, and consequently, the limitation defense under Section 90 of the Employment Act does not apply, and objections based on it have severally been dismissed as without merit.

**14.**The Applicant states that the Respondent remained in communication with the insurer, giving assurances that the compensation would be settled, and that, in light of these representations, it would have been premature and in bad faith to initiate enforcement proceedings at that time.

**15.**It is the Applicant's further submission that the Respondent's conduct induced delay, effectively placing the Applicant in a position where they refrained from filing suit while awaiting settlement.

**16.**The Applicant invokes the doctrine of Equitable Estoppel, arguing that a party cannot benefit from its own representations after causing another party to rely on them. The Applicant contends that the Respondent should be estopped from raising a limitation defence, having contributed to the delay through assurances of settlement.

## **Determination**

**17.** The issue for determination is whether the present application for adoption of a DOSHS award is statute barred, and whether Section 90 applies to proceedings under WIBA.

**18.** The legal position on Preliminary Objections was well laid down in the case of ***Mukisa Biscuit Manufacturing Co. Ltd -vs West End Distributors Ltd (1969) EA 696***, where the court held as follows:-

***“A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which, if argued as a preliminary point, may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion.”***

**19.** The Objection in this suit is a plea of limitation premised on Section 90 of the Employment Act, 2007. Section 90 of the Employment Act 2007 states thus;

***“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.”***

**20.** The Respondent’s objection herein concerns time limitation, which is a proper point of law and is therefore competently before the Court.

**21.** Section 90 of the Employment Act prescribes a three year limitation period for claims arising out of a contract of service. The Respondent’s argument is that the cause of action accrued on 18<sup>th</sup> March 2016, being the date of the Director’s award, and for this reason, it contends that the time lapsed on 18<sup>th</sup> March 2019, rendering the 2025 application for adoption of the award time barred.

**22.** In my view, the critical issue is whether enforcement of a DOSHS award is a claim arising out of a contract of service, or a statutory enforcement process under WIBA.

- 23.** The decision of this Court (differently constituted) in *Tuma v Red Mamba Agencies Limited* clarified that adoption and enforcement of a Director's award arise under the Work Injury Benefits Act (WIBA), and that such applications are governed procedurally by Rule 69 of the Employment and Labour Relations Court (Procedure) Rules. The court went on to state that awards under WIBA are not contractual claims within the meaning of Section 90 of the Employment Act.
- 24.** This position aligns with the statutory framework of WIBA, where compensation is assessed administratively by the Director and enforced through the Court as a statutory right.
- 25.** Accordingly, I hold that Section 90 of the Employment Act, 2007 does not apply to the enforcement of DOSHS awards.
- 26.** On whether limitation can be raised in respect of the Director's awards, the simple answer is that the law does not prescribe a strict time limit for filing an award for adoption once issued by the Director.
- 27.** Further, the Respondent has not rebutted the Applicant's assertion that it made assurances and continued engagement with the insurer, which both induced delay and made the Applicant believe that the award would be settled. It would therefore, in my view, be inequitable to allow the Respondent to rely on limitation.

**28.** Having said all these, I conclude by adding that an application for adoption of a DOSHS award is an enforcement step rather than a new claim or an appeal; hence, time limitation does not arise.

**29.** In the upshot, I find and hold that the Respondent's objection is devoid of merit and is dismissed with costs to the Applicant.

**30.** The application for adoption of the Director's award shall proceed to hearing on the merits.

**31.** It is so ordered.

**SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 7<sup>TH</sup> DAY OF MAY, 2026.**

**C. N. BAARI  
JUDGE.**

**Appearance:**

Mr. Masua Present for the Applicant

Ms. Anya h/b for Mr. Mwihuri Present for the Respondent

Ms. Esther S- C/A