



Mutunga v African Express Airways Limited (Employment and Labour Relations Cause E121 of 2024) [2025] KEELRC 951 (KLR) (27 March 2025) (Ruling)

Neutral citation: [2025] KEELRC 951 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E121 OF 2024**

BOM MANANI, J

MARCH 27, 2025

BETWEEN

ELIZABETH MUTHEI MUTUNGA CLAIMANT

AND

AFRICAN EXPRESS AIRWAYS LIMITED RESPONDENT

RULING

Background

1. This is a claim for enforcement of an award made by the Director of Occupational Safety and Health Services (the Director) on 1st December 2016 following a fatal workplace injury at the Respondent's premises which resulted in the demise on Raphael Mutunga Nguli (the deceased). The Claimant has sued the Respondent for failure to make good the award.
2. The claim is opposed. At paragraph 6 of the response to the claim, the Respondent objects to the suit on the ground that it is statute barred. As such, it (the Respondent) urges the court to strike it (the suit) out.

Analysis

3. The preliminary objection is founded on section 89 of the *Employment Act* which provides as follows:-
“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 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.”



4. This provision excludes the application of the *Limitation of Actions Act*, Cap 22 Laws of Kenya in addressing the issue of limitation of time in respect of claims arising from a contract of service. It further provides that except for continuing injury claims which ought to be filed within one year of discontinuance of the injury in question, all other claims arising from a contract of service must be filed within three years of the cause of action arising.
5. The Respondent contends that the cause of action in the case accrued in 2016 when the fatal accident that informed the Director's award occurred. Therefore, suit in respect of it (the cause of action) ought to have been filed within three years of occurrence of the said accident, that is to say latest 2019.
6. The Respondent avers that the instant suit was filed in February 2024, more than three years from the date the cause of action accrued. As such, it offends the express provision of section 89 of the *Employment Act* on limitation of actions.
7. The instant claim seeks to enforce the award by the Director which was rendered on 1st December 2016. Thus, the cause of action in respect of the suit arose when the Director's award crystallized on 1st December 2016.
8. The record shows that the case was filed on 22nd February 2024. This was more than seven (7) years from the date the Director rendered his award.
9. The award which is sought to be enforced arose from a fatal workplace accident on 23rd February 2016. As such, the instant claim is founded on a contract of service.
10. As noted earlier, section 89 of the *Employment Act* requires all claims arising from a contract of service to be lodged within three years of the cause of action arising. As such, this suit ought to have been presented to court by 1st December 2019.
11. The fact that the action was filed on 22nd February 2024 implies that it was filed outside the timelines that are contemplated in law. Therefore, it is statute barred.
12. Commending on a similar matter where a Claimant moved the court to enforce a Director's award under the *Work Injury Benefits Act* more than three years after the award was rendered, the learned Judge in *Ng'ang'a v County Government of Nakuru (Miscellaneous Civil Application E007 of 2022)* [2023] KEELRC 789 (KLR) (29 March 2023) (Ruling) observed as follows:-

“The application to enforce the award herein was filed in court on 31st March, 2022. This is way beyond the three years provided for in the law. There is no evidence whatsoever that the time within which to file the same was legally expanded and or extended, and in any event, there is no law providing for such expansion or extension of the limited time. There is also no explanation as to why the application was not filed within the limited time.

For all the foregoing reasons, this court comes to the sad but inevitable conclusion that the application herein and the cause of action was filed out of time and the same is improperly before the court for the action is time-barred.”
13. The court notes that the Respondent contends that the cause of action in the suit accrued when the suit accident occurred. However, the dispute before court relates to enforcement of the Director's award. As such, the cause of action in the suit accrued on 1st December 2016 when the Director rendered the award and not on 23rd February 2016 when the suit accident occurred.
14. That said, the question of limitation of actions is a jurisdictional matter (*David Mwangi Maina v Simon Sana Koli & another* [2018] eKLR). Being a jurisdictional question, it can be taken up by the court



suo moto (Monata Matiko Chonchorio v John Marwa Chabaro [2021] eKLR). As such, although the Respondent did not raise the issue of limitation from the perspective that has been considered by the court, the court has nevertheless taken up the matter on its own motion since it affects its jurisdiction to entertain the dispute.

15. In their submissions, counsel for the Claimant contend that since the suit seeks declaratory orders, it is not covered by the provisions of section 89 of the *Employment Act*. However, they provide no basis upon which they base this contention.
16. The Claimant has also quoted the case of Joash Shisia Cheto v Thepot Patrick Charles [2022] eKLR purportedly in support of her case. However, the question of limitation of actions was not considered in that case. As such, the case is of no relevance to the issue which the court is called upon to determine in the instant preliminary objection.

Determination

17. The upshot is that the court comes to the conclusion that the instant suit is statute barred.
18. As such, it is struck out with costs to the Respondent.

DATED, SIGNED AND DELIVERED ON THE 27TH DAY OF MARCH, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

.....for the Respondent

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

