



**Ibrahim v Teachers Service Commission (Miscellaneous Application E008 of 2023) [2024] KEELRC 63 (KLR) (26 January 2024) (Ruling)**

Neutral citation: [2024] KEELRC 63 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU**  
**MISCELLANEOUS APPLICATION E008 OF 2023**  
**ON MAKAU, J**  
**JANUARY 26, 2024**

**BETWEEN**

**HADIJA MOHAMED IBRAHIM ..... APPLICANT**

**AND**

**THE TEACHERS SERVICE COMMISSION ..... RESPONDENT**

**RULING**

1. This ruling relates to the applicant’s Notice of Motion dated 28<sup>th</sup> July, 2023 and Respondent’s Notice of Preliminary Objection dated 29<sup>th</sup> August 2023. The notice of motion seeks the following orders:-
  - a. That the Honourable court be pleased to make a declaration that the Respondent pay the claimant the award amount of Kshs 1,371,881.30 being the compensation award by the Director of Occupational Safety and Health Services to the claimant.
  - b. That the compensation of Kshs 1,371,881.30 by the Director of Occupational Safety and Health Services to the claimant be adopted as the judgment of this court.
  - c. That costs of the application be paid by the Respondent.
  - d. Interest on prayer 2 and 3 above.
2. The preliminary objection impugns the motion on ground that this court lacks jurisdiction to hear and determine the motion as it is statute barred under section 90 of the [Employment Act](#).

**Respondent’s submissions**

3. The respondent did not deny the fact that the applicant was injured while in the course of her employment and that compensation was assessed by the Director under the [Work Injury Benefit Act](#) (WIBA). It has also not indicated that the award by the Director is under any challenge as contemplated



- by section 51 and 52 of the [WIBA](#). All what the respondent argued is that the claim is statute barred by dint of section 90 of the [Employment Act](#) since it is a claim based on employer-employee relationship.
4. For emphasis reliance was placed on the case of [Richard Akama Nyambane v ICG Maltauro SPA](#) (2020) eKLR where Mbaru J dismissed a suit for adoption of Director's award on ground that it was statute barred by dint of Section 90 of the [Employment Act](#) since the award was entered more than three years before the claimant filed the suit.
  5. The applicant has opposed the preliminary objection and urged the court to allow her application. She maintained that the award by the Director has not been disputed and it is not the subject of objection proceedings before the Director under section 51 of the [WIBA](#).
  6. It was the applicant's case that the respondent had not stated when it was served with the Award by the Director under WIBA and as such it has not been ascertained when the three years limitation period started. For emphasis, reliance was placed on the case of [Elijah Kisyanga Ndende v The Manager Zabkem International Construction Ltd](#) (2022) eKLR where the court found that the date of service of the award had not been ascertained and therefore the issue of time bar had not been substantiated.
  7. In the alternative, the applicant submitted that in the event the court found the claim to be time barred, then it should impose criminal enforcement mechanism under section 26 (b) of the [WIBA](#). The said section prescribes a fine, not exceeding Kshs 100,000.00 or imprisonment for a term not exceeding one year or both in respect of an employer who fails to pay compensation claimed under that provision.

#### **Issues for determination**

8. Having considered the material presented to the court and the submissions by counsel, the following issues fall for determination: -
  - a. Whether the respondent's motion is statute barred.
  - b. Whether the motion should be allowed as prayed.

#### **Statute barred**

9. The applicant's motion is brought under Article 162(2) of the [Constitution](#), section 12 (1) of the [ELRC Act](#), section 1 A & B,3A and 63 of the [Civil Procedure Act](#) and Order 51 (c) of the [Civil Procedure Rules](#). It seeks basically for adoption as judgment, the award of Kshs 1,371,881.30 being compensation assessed by the Director of Occupational Safety and Health Services, and enforce it against the respondent. The motion is supported by an Affidavit which has annexed a carbon copy of the Director's award in the demand to the respondent dated 16<sup>th</sup> December, 2019. The motion is therefore not a suit for litigation but for summary proceedings of adoption of judgment and enforcement of the ensuing decree.
10. As it has been held and settled by the courts above, the Director of Occupational Safety and Health Services is the one bestowed with the power to adjudicate work injury claims. The WIBA also prescribes the procedure and the timelines for such claims. In the said procedure, this court only enjoys appellate jurisdiction from the decision of the Director under section 52 (2) of the [WIBA](#). Such decision is in respect of an objection to the Director's decision on any matter under the WIBA. I therefore reiterate that an application for adoption of an award by the Director as judgment is not a fresh suit for litigation but mere invocation of the courts' inherent jurisdiction to do justice.
11. Without adoption of the decision of tribunals as judgment employers like the respondent herein, would fail to comply with administrative decisions. In any event, the motion for adoption of such



decision cannot be said to be time barred so long as the claimant is still in employment of the respondent. Besides, if the court was to disregard lawful administrative decisions, it would be acting contrary to the constitutional principles as enshrined in Article 159 (2) by failing to encourage Alternative Disputes Resolution mechanisms.

12. This case is distinguishable from the case of *Richard Akama Nyambane v ICG Maltauro SPA*, cited by the respondent in that in the said case, the applicant filed a memorandum of claim seeking for adoption of the Director's decision as judgment of the court.
13. On the other hand, the applicant raised the question of service of date of the Director's decision on the respondent. The respondent has not provided any evidence to prove that three years had lapsed since receipt of the decision. Whereas it is clear that the demand notice was dated 16<sup>th</sup> December 2019, there is no indication of the date when it was received by the respondent. In the circumstances the defence of statute bar has not been substantiated.
14. I gather support from the case of *Elijah Kisyanza Ndende supra*, where Nzei J held that: -  

“...the respondent, just like the Applicant, did not tell the court when the Director's decision (assessment) was received by the respondent. For the foregoing reasons only, I will not hold the issue of uncertainty over the issue of lapse of time against the applicant.”
15. In view of the finding that the motion is not a suit for commencing fresh litigation, the duty of the court to encourage ADR, and the fact that the date of service of the decision of the Director on the respondent is not indicated, the objection by the respondent is overruled.

#### **The motion**

16. In view of the fact that the injuries suffered by the applicant, and the decision by the Director are not in dispute, I allow the application as prayed with costs to the applicant.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 26<sup>TH</sup> DAY OF JANUARY, 2024.**

**ONESMUS N MAKAU**

**JUDGE**

#### **Order**

This ruling has been delivered to the parties via Teams video conferencing with their consent, 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.

**ONESMUS N MAKAU**

**JUDGE**

