



**Karanja v Rift Valley Machinery Services Ltd (Miscellaneous Application  
E076 of 2023) [2024] KEELRC 1617 (KLR) (24 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1617 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E076 OF 2023**

**K OCHARO, J  
JUNE 24, 2024**

**BETWEEN**

**DAVID MWANGI KARANJA ..... APPLICANT**

**AND**

**RIFT VALLEY MACHINERY SERVICES LTD ..... RESPONDENT**

**RULING**

1. Through a Notice of Motion Application dated 18<sup>th</sup> March 2023, the Applicant herein sought;
  - a. That this Honourable Court does adopt the award of the Director of Occupational Safety and Health Services as the Judgment of this court.
  - b. That a decree do issue accordingly for execution.
  - c. That the Respondent equally bears the costs of this application.
2. The Respondent resisted the application through the Replying Affidavit sworn by Mr. Peter Mbui on the 21<sup>st</sup> September 2023. Contemporaneously with the filing of the Replying Affidavit, it filed a Notice of Preliminary Objection in which it was asserted that the application is barred by effluxion of time as provided for under section 90 of the *Employment Act*. Consequently, the court lacks jurisdiction to hear and determine the matter.
3. The court gave directions that the application be canvassed by way of written submissions. The Applicant filed his dated 13<sup>th</sup> October 2023, while the Respondent did its dated 11<sup>th</sup> January 2024.

**The Applicant's Submissions**

4. In his submissions, Counsel for the Applicant identified two issues for resolution in this matter thus;
  - a. Whether the Respondent's Preliminary Objection dated 21<sup>st</sup> September 2023 is merited.



- b. Whether the Applicant's application dated 18<sup>th</sup> March 2023 should be allowed.
5. Counsel submitted that work injuries and remedies flowing therefrom are regulated under the *Work Injury Benefits Act*, 2007 (WIBA). Further, there being legislation specifically addressing work-related injuries and diseases contracted in the course of an employee's employment, the *Employment Act*, 2007, which is a latter Act does not apply with regard to the injuries and diseases. Reliance was placed on the case of *Elijah Kisyinga Ndende vs. Manager Zahkem International Construction Ltd (2022)* eKLR1.
6. Part IV of the *Work Injury Benefits Act* exhaustively provides the steps to be undertaken once an industrial accident occurs. Section 27 of the Act provides:
- “(1) A right to benefits in accordance with this *Act* shall lapse if the accident is not reported to the employer within twelve months after the date of such accident.
- (2) Notwithstanding the provisions of subsection (1), the failure to report an accident to an employer as required in subsection (1) is not a bar to compensation if it is proved that the employer had knowledge of the accident from any other source.”
7. Counsel for the Applicant argued that the Director's award was not objected to or appealed against as contemplated under the provisions of section 51 (1) of the *WIBA*. Therefore, the Director's award at all material times was ripe for enforcement. However, the Act does not expressly provide for a time limit for enforcement of the award of the Director.
8. Counsel for the Applicant urged this court to appreciate that there is a lacuna in the WIBA as regards the enforcement of the Director's award and the timelines for enforcement. The Applicant should not be kept without remedy owing to the lacuna. To support this position, reliance was placed on the holding in *Jared Ingling Obuya v Handicap International* (2021) eKLR by Nduma J, thus;
- “The *Work Injury Benefits Act* is silent on the manner of enforcement of the decisions by Director DOSH. It is however this court's finding that it would not have been the intention of the Legislator that beneficiaries of compensation by Director DOSH remain without a remedy in the event an employer does not implement the decision of the Director awarding an employee compensation. The court must bridge the lacuna and bring to effect the objects and purpose of the Act as captured in the preamble as follows:
- “An Act of Parliament to provide for compensation to employees for work-related injuries and diseases contracted in the course of their employment and for connected purposes”..”
9. The Applicant urged the court to dismiss the Preliminary objection and allow his Notice of Motion herein.

#### The Respondent's submissions

10. The Respondent's Counsel identified two issues for determination;
- a. Whether the Application is statute-barred by section 90 of the Employment Acts; and
- b. Whether the Application is hinged on the wrong provisions of the law.
11. Citing the case of *Mukhisa Biscuits Manufacturing Company Ltd vs. West End Distributors Ltd (1969)* E.A., Counsel for the Respondent submitted that the Preliminary Objection herein meets the threshold of a proper Preliminary Objection.



12. Counsel submitted that an action founded on a contract of employment cannot be brought after the end of three (3) years from the date the cause of action accrued.
13. The Director's award sought to be enforced through the instant application is contained in the DOSH/WIBA form dated 13<sup>th</sup> November 2019. The application ought to have been filed on or about 13<sup>th</sup> November 2022, therefore.
14. The Application was filed on 4<sup>th</sup> April, 2023. Accordingly, the Application was brought after the end of three years and therefore the application is bad in law and thus null and void ab initio. It deserves to be dismissed.
15. The Applicant was indolent in pushing for his rights for compensation. Applying the maxim equity aids the vigilant and not the indolent, the Applicant's application becomes a fit candidate for dismissal. To buttress this submission reliance was placed on the case of *Abigael Barma v Mwangi Theuri* ELC No. 393 of 2013.
16. It was further submitted that the instant application is mis-anchored as it is founded on wrong provisions of the law. The application is expressed to be under the provisions of sections 25 and 51 of the *Work Injury Benefits Act*. The reliefs sought are unavailable under the provisions. This defect cannot be said to be a procedural technicality. It cannot be cured by invocation of the provisions of Article 159 of *the Constitution*.
17. Counsel concluded his submissions by urging the court to uphold the preliminary objection, and dismiss the instant application.

### **Analysis and Determination**

18. Three things are certain here, first, the Applicant lodged a workplace accident claim with the Director of Occupational Safety and Health Services, pursuant to the provisions of the *Work Injury Benefits Act*, second, under the mandate donated to him by the Act, the Director did investigate the accident claim, assessed the Applicant's injuries; and there was neither an objection nor an appeal lodged by the Respondent under section 51(1) and 52(2) of the *Work Injury Benefits Act*.
19. There is no dispute and rightly so that the Applicant lodged his claim before the right fora, adhering to the statutory procedure and timelines applicable. Out of the statutory process engaged, there obtains a verdict in his favour. The Respondent in my view erroneously terms the Applicant's application herein, a claim. To this court, the Applicant in his instant application has not presented a claim for interrogation but initiated a process that could lead to enforcement of the verdict that flowed from his claim mentioned above. The Respondent's objection is heavily anchored on the fact that what is before this court in a claim. To the extent that I have found that it is not, the objection is heavily shaken and it stands on quick ground.
20. I have carefully considered the provisions of section 90 of the *Employment Act*, which provides;

“Notwithstanding the provisions of section 4(1) of the Limitations of Actions Act (Cap 22), no civil action or proceeding 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.”

And conclude that this provision looked at from whatever angle does not contemplate initiated proceedings for enforcement of an award, or verdict, as a result of proceedings under the WIBA.



21. In my considered view, once the award of the Director is adopted as a judgment of the court for enforcement purposes, the applicability of section 4(4) of the Limitation of Actions Act, which has not been ousted by section 90 of the Employment Act, sets in. The sub-section provides:

“An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment or delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.”

22. By reasons of the premises I find the preliminary objection misplaced. I decline the same, as a result.

23. Having found as I have that the preliminary objection must fail, I see no compelling reason why I should not adopt the verdict of the DOSH which the Respondent never assailed in any manner as contemplated in the WIBA, as judgment of this court for purposes of enforcement of the verdict. Consequently, I hereby allow the Applicant’s notice of motion dated 18<sup>th</sup> March 2023 with costs.

**READ, SIGNED, AND DELIVERED THIS 24<sup>th</sup> DAY OF JUNE, 2024.**

**OCHARO KEBIRA**

**JUDGE**

In the Presence of;

Ms. Omamo for the Applicant

Ms Nyatta for the Respondent

**ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

**OCHARO KEBIRA**

**JUDGE**

