



**Njuguna v Unilever Kenya Limited (Miscellaneous Application  
E171 of 2022) [2023] KEELRC 1843 (KLR) (31 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1843 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E171 OF 2022**

**BOM MANANI, J**

**JULY 31, 2023**

**BETWEEN**

**JOEL NGECHA NJUGUNA ..... APPLICANT**

**AND**

**UNILEVER KENYA LIMITED ..... RESPONDENT**

**RULING**

1. This is an application for enforcement of an award by the Director of Occupational Health and Safety (the Director) rendered on April 2, 2019. By this award, the Respondent was ordered to pay the Applicant Ksh 6,464,870.40 as compensation for injuries allegedly suffered by the Applicant whilst working for the Respondent. The award was made pursuant to the provisions of the *Work Injury Benefits Act, 2007*.
2. Despite the Director's efforts to have the Respondent remit the amount in the award to the Applicant, this was not done. The Respondent's position was that the award was unmerited as the Applicant suffered no injury whilst at work. The Respondent indicated that if such injury occurred, it was not reported to the Respondent as required by law.
3. As a result of the Respondent's refusal to settle the award, the Director wrote to the Applicant on August 1, 2022 advising him to pursue enforcement through other suitable legal avenues. It is this letter that appears to have prompted the decision to commence the current proceedings.
4. The parties agreed to canvass the application through written submissions. They have since filed the submissions.

**Applicant's Submissions**

5. The Applicant indicates that he suffered injury around June 28, 2009 whilst working for the Respondent. The Applicant avers that he reported the accident to the Respondent who in turn



reported the matter to the Director in March 2019. Following this development, the Applicant indicates that the Director assessed the injury and awarded him compensation of Ksh 6,464,870.40.

6. It is the Applicant's case that upon making this award, the Director notified the Respondent to settle the claim. However, the Respondent did not pay the compensation as ordered or at all. It is this failure to pay the amount awarded by the Director that necessitated the filing of this application.
7. The Applicant takes the position that as the Director's award was made on April 2, 2019, the application for enforcement filed on October 14, 2022 is within the limitation period set by law. The Applicant relies on section 4(1) (c) of the *Limitation of Actions Act* to advance this argument. The said section provides, in part, as follows:-

"The following actions may not be brought after the end of six years from the date on which the cause of action accrued:-

c) Actions to enforce an award."

8. It is the Applicant's case that the action has been brought less than six years from the time the Director rendered his award. Therefore, it is within the limitation period.
9. The Applicant contends that the court is not entitled to evaluate the merits of the Director's award at this stage. All that the court is required to do is to adopt the award as it is for purposes of enforcement.

### **Respondent's Submissions**

10. On its part, the Respondent has maintained its position that no accident occurred involving the Applicant as alleged or at all. The Respondent denies having been notified of any such accident. The Respondent further denies having lodged a report about the alleged accident with the Director.
11. The Respondent argues that the Director's award was made approximately ten (10) years from the date that the alleged accident is said to have occurred. That by this time, the matter was already grossly out of time.
12. It is the Respondent's contention that under section 90 of the *Employment Act*, actions to enforce a right based on a contract of employment must be brought within three (3) years of the cause of action arising. Consequently, the application to enforce the Director's award of April 2, 2019 ought to have been filed within three (3) years from the date of the award. The fact that the application was presented in October 2022 means it was filed outside the timelines prescribed by section 90 of the *Employment Act*. In the Respondent's view, this claim is therefore time barred.
13. The Respondent contends that it is not open to the Applicant to rely on the provisions of the *Limitation of Actions Act* to determine limitation of actions in litigation arising from contracts of employment. According to the Respondent, section 90 of the *Employment Act* specifically excludes the application of section 4(1) of the *Limitation of Actions Act* to employment disputes.
14. The Respondent points out that the question of limitation of actions goes to the jurisdiction of the court to entertain a dispute. If a matter that is presented to court for adjudication is outside the time prescribed by law, the court has no jurisdiction to entertain it. It is the Respondent's further position that this court has no power to extend time for presenting claims before it beyond the time that is prescribed under section 90 of the *Employment Act*.



## Analysis

15. From the record, the parties have raised several matters for determination. However, I will only address the issue of limitation of actions which is sufficient to dispose of the matter.
16. As the Respondent rightly points out, the question of limitation of actions goes to the jurisdiction of the court to pronounce itself on a matter that is before it. The effect of the law on limitation of actions is to bar the court from entertaining cases that are filed outside the timelines that have been fixed by statute. In effect, the court has no jurisdiction to entertain such actions.
17. The award that the Applicant seeks to enforce was rendered on April 2, 2019. On the other hand, the action to enforce the award was presented to court on October 14, 2022, about three years and five months down the line.
18. The Applicant argues that the claim was filed within the time that the law prescribes. According to the Applicant, section 4(1)(c) of the *Limitation of Actions Act* which allows filing of actions for enforcement of awards within six (6) years of making the award applies to his case. As the Director's award in his favour was made on April 2, 2019 and suit for enforcement filed on October 14, 2022 about three and half years down the line, the Applicant contends that the action is properly before the court.
19. Conversely, the Respondent posits that section 90 of the *Employment Act* excludes the application of section 4(1) of the *Limitation of Actions Act* to actions arising from employment relations. The *Employment Act* requires that such actions be filed within three (3) years of the cause of action accruing. Thus, this action having been filed outside three (3) years is barred by the law on limitation as prescribed by the *Employment Act*.
20. Section 90 of the *Employment Act* 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."
21. The above provision leaves no doubt in my mind that the application of section 4(1) of the *Limitation of Actions Act* to disputes arising from employment relations is excluded. Therefore, the submission by the Applicant that this provision is available to determine the timelines within which a party is to move the court to enforce an award arising from an employment relation is erroneous.
22. It is clear from the record that the Applicant filed the current action to enforce the Director's award outside the three (3) year period that is fixed by section 90 of the *Employment Act*. To that extent, the action is time barred (see *Richard Akama Nyambane v ICG Maltauro Spa* [2020] eKLR).
23. I note from the application that the Applicant had sought leave to proceed with the action out of time. Although this request was not pursued in the Applicant's submissions, the Respondent has addressed it in its submissions. It is therefore appropriate that I make some observations on it.
24. Whilst section 90 of the *Employment Act* provides for the limitation period for actions arising from employment relations, it does not provide for enlargement of this time. Parliament, in its wisdom, did not think that parties to an employment relation should be granted leave to file actions arising from the relation outside the timelines that are set in section 90 of the *Employment Act*.



25. The foregoing being the position, the court cannot arrogate itself the power to enlarge time to file actions based on employment relations beyond what is fixed in section 90 of the [Employment Act](#). If the court was to do so, it will be acting outside the law.
26. This position has been made clear in a number of decisions including [Samson Wanyoike Kimani v Bliss Flora Limited](#) [2018] eKLR. The court's hands are tied in this respect.
27. I appreciate the position expressed by the Applicant that at the stage of adopting a director's award the court's role does not extend to examining the merits of the award. This avenue is open to the court only when the dispute in respect of the award comes before it as an appeal pursuant to section 52 of the [Work Injury Benefits Act](#) (see [Joash Shisia Cheto v Thepot Patrick Charles](#) [2022] eKLR).
28. However, this is not the issue that falls for consideration in the current dispute. To ask the court to examine whether it has jurisdiction to adopt the award outside the time that is fixed by law is not the same thing as asking it to examine the merits of the award.

### **Determination**

29. The upshot is that the current application was filed outside the timelines that are set under section 90 of the [Employment Act](#). Consequently, the court lacks the requisite jurisdiction to entertain the matter. The application is therefore struck out with costs to the Respondent.

**DATED, SIGNED AND DELIVERED ON THE 31ST DAY OF JULY, 2023**

**B. O. M. MANANI**

**JUDGE**

**In the presence of:**

..... for the Applicant

.....for the Respondent

**ORDER**

**In light of the directions issued on 12<sup>th</sup> 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**

