



**Mbuno & another (Suing as Administrators ad litem of the Estate of the Late Henry Onda Ungugu) v Bluejay Investments Limited (Miscellaneous Application E007 of 2025) [2017] KEELRC 2015 (KLR) (31 July 2017) (Ruling)**

Neutral citation: [2017] KEELRC 2015 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
MISCELLANEOUS APPLICATION E007 OF 2025**

**K OCHARO, J  
JULY 31, 2017**

**BETWEEN**

**FAITH MUENI MBUNO & JULIET MBINDA ..... APPLICANT  
SUING AS ADMINISTRATORS AD LITEM OF THE ESTATE OF THE LATE  
HENRY ONDE UNGUGU**

**AND**

**BLUEJAY INVESTMENTS LIMITED ..... RESPONDENT**

**RULING**

1. By a Chamber Summons Application dated 21<sup>st</sup> January 2025, the Applicant sought the following orders;
  - a. This Application is certified urgent, and service be dispensed with in the first instance.
  - b. The Applicant be granted leave to file an Application against the Respondents, towards enforcement of the award/assessment of the Director of Occupational Safety and Health Services, Mombasa, made on 24th August, 2017, outside the limitation period under statute.
  - c. The Draft Application annexed herein be deemed duly filed within the statutory timelines and that the same be admitted for purposes of the intended Suit.
  - d. Costs of this Application abide by the outcome of the intended Suit.
2. The application is expressed to be under the provisions of section 4, 21, 22, & 27 of the *Limitation of Actions Act*, Article 162 of *the Constitution*, Section 12 of the Employment and *Labour Relations Act*, Rule 69 of the Employment and Labour Relations Court [Procedure] Rules, 2024, Sections 19[2] and 51 of the Works Injuries Benefits Act, Orders 40 and 51 of the Civil Procedure Rules, 2010, and Article 159[2][d] of *the Constitution*.



3. The application was premised on the following grounds
  - a. Whereas Section 89 of the *Employment Act* states that an employment claim should be brought within three (3) years from the date the cause of action arose. Due to the circumstances of this matter that were out of the Applicant's control, they were unable to lodge this Claim within the prescribed period.
  - b. The Applicants stated that the deceased was an employee of the Respondent as a driver, at all material times, and who, in the course of his employment, got involved in a work-related incident, resulting in his demise.
  - c. The incident was reported to the Directorate of Occupational Safety and Health Services, Mombasa, vide DOSH/FORM 1, and upon the Director launched investigations as required by the law, and on 31<sup>st</sup> December, 2013, issued DOSH /FORM 4, requiring the Respondent to compensate the estate of the deceased, KSHS. 2,448,000.
  - d. The Deceased's estate had a legitimate expectation that, pursuant to the express statutory provisions of the *Work Injury Benefits Act*, upon such assessment, the Respondent was bound by the law to effect the said payment within ninety [90] days, after which the Director would remit the sum so paid to Deceased's estate within [30] days.
  - e. If the Respondent was aggrieved with the Director's decision, they ought to have objected or appealed against the assessment within 60 days of the award.
  - f. The Director wrote several demand letters, notably one dated 4<sup>th</sup> December, 2017 and resting with the letter dated 27<sup>th</sup> June 2022 for payment of the assessed sum. Still, the Respondent has been adamant about making payment.
  - g. The Respondent has deliberately refused to settle the awarded sum, and this refusal continues. The refusal constitutes a continuous injury. The justice of this matter requires that the extension of time sought be granted.
4. The Respondent filed a preliminary objection to the application raising a jurisdictional issue;
  - I. That under Section 4[2] of the *Limitation of Actions Act*, as read together with Section 90 of the *Employment Act*, the application is time-barred as it has been brought more than three [3] years after the cause of action.
  - II. This Court has no jurisdiction to hear and determine this matter under the *Work Injury Benefits Act* [WIBA].
5. The application before this Court is essentially for an extension of time to lodge a claim for enforcement of the Director's award. It is similar to any other application for an extension of time, such as the one provided under section 28 of the *Limitation of Actions Act*, or for an extension to lodge an appeal. Such applications rarely have statutory deadlines within which they must be filed. They can only be dismissed if they do not satisfy the known conditions that support granting the extension, and not because they were filed outside the time limit.
6. The Respondent has invoked Section 4[2] of the *Limitation of Actions Act*, which provides;

“An action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued.



Provided that an action for libel or slander may not be brought after the end of twelve months from the date on which the cause of action arose.”

7. The instant application cannot be equated to an action of contract or tort or any other action contemplated under section 4 of the *Limitation of Actions Act*. It isn't a claim for tort under section 4[2] of the Act. It is merely an application for extension of time.
8. This Court commends the diligence of the Counsel for both parties, as demonstrated in their submissions; however, with all due respect, I consider their arguments to be immaterial to the current application, given the premises outlined in paragraphs 5, 6, and 7.
9. In the end, I find the preliminary objection standing on quicksand as it is anchored on provisions of the law that are inapplicable in the present matter. It is hereby dismissed with costs.
10. Orders accordingly.

**READ, SIGNED AND DELIVERED THIS 31<sup>ST</sup> DAY OF JULY 2025.**

**OCHARO KEBIRA**

**JUDGE**

