



**Krharah v Boskovic Air Chambers Limited (Cause E110 of 2023)  
[2024] KEELRC 1163 (KLR) (24 April 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1163 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E110 OF 2023  
DKN MARETE, J  
APRIL 24, 2024**

**BETWEEN**

**DAVID MWANGI KRHARAH ..... CLAIMANT**

**AND**

**BOSKOVIC AIR CHAMBERS LIMITED ..... RESPONDENT**

**RULING**

1. This is an application by way of a Preliminary Objection dated 24th April, 2023. It comes out as follows;
  1. The Claimant’s suit is time barred by the Three (3) year limitation period imposed by Section 90 of the *Employment Act*, 2007.
2. The Respondent/Applicant’s submission is that from a cursory look at the pleading and particularly at paragraph 5 of the statement of claim, the claimant pleaded that he left employment on 31st December, 2019. This is also evidenced in the claimant’s witness statement as follows;

“A few days to the expiry of the Notice of retirement, I had a sitting with Mr. Rajeev an Accountant with Z. Boskovic Air Charters Limited and he tabulated my dues which amounted to Kshs.2,577,333.00. The calculations done by Mr. Rajeev did not include the calculation of my gratuity for 27 years of service to the company.”
3. She also argues that the claim for damages cannot be interpreted as a continuing injury and asked that the entire claim be dismissed for lack of merit.

She therefore denies merit in the claim on ground of time bar and prays that this be dismissed for want of merit.



4. The Claimant/Respondent's case and submission is that despite the contract of employment terminating on 31st December, 2019 being the date of payment of the claimant's terminal dues, NSSF deductions were paid on 12th March, 2020. The issue of time as relates to this cause started running from this date and ended on 11th March, 2023 and therefore debunking the time bar aspect of this application.

It is the Claimant/Respondent's case that the availability of registration on NSSF is not a total bar to a case for gratuity. This was emaciated in the authority of Elijah KipkorsTonui versus Ngara Opticians T/A Bright Eye Limited Industrial Cause No. 871 of 2012 where it was held as follows;

With this in mind it is also clear that the issue of gratuity being the sole question for litigation, the time for filing a suit can only start running from when the payments of any benefits were last credited to the Claimant's account and not on the 31<sup>st</sup> of December 2019 as the Respondent would have you believe. The Respondent is attempting to change the crux of the Claimant's suit with this preliminary objection in a bid to have the suit dismissed and escape remitting what is rightfully and legally owed to the Claimant. The Respondent's Preliminary Objection was filed without taking into account the prayers sought as the Claimant's suit did not raise a question on how the termination of the Claimant's employment came about but was based on the question of the remission of his benefits.

5. The claimant/Respondent's case takes sway on the application. This is because he ably argues that the contest at hand in the claim is not one of termination of employment but gratuity. This being the case, the time bar rule and phenomenon is in applicable in the circumstances. This is because NSSF was paid far after termination of employment on 11th March, 2020. Therefore, this become the onset of the calculation of time in this cause.

I agree with the Claimant/Respondent's case.

6. I therefore inclined to dismiss the preliminary objection with orders that each party bears their cost to the same.

**DELIVERED, DATED AND SIGNED THIS 24TH DAY OF APRIL 2024.**

**D. K. NJAGI MARETE**

**JUDGE**

Appearances:

Mr. Odhiambo instructed by BA Ouma & Associates Advocates for the Respondent/Applicant

Maina Njuguna Instructed by Maina Njuguna & Associates for the Claimant/Respondent.

