



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
INSOLVENCY PETITION NO. E009 OF 2019

STEPHEN EYAUMA.....PETITION

VERSUS

INVESCO ASSURANCE COMPANY LIMITED.....RESPONDENT

JUDGMENT

1. The petitioner herein **STEPHEN EYAUMA**, filed this petition on 7th April 2019 seeking the following orders:-

- a) That Invesco Assurance Company Limited be wound up by an order of this Honourable court under the provisions of the Companies Act 2015.*
- b) That the costs of this application and Kshs 1,393,811.29/= debt be provided to the petitioner out of the assets of the company in priority.*
- c) That the winding up proceedings be conducted by the Official Receiver.*

2. The petition is premised on the following grounds:

- a. That a declaratory suit was filed in CMCC 4021 of 2018 **Stephen Eyauma v Invesco Assurance Company Limited** wherein judgment was delivered in favour of the petitioner for the sum of Kshs 1,393,811.29/= after which a decree was extracted and served upon the company who have to date not settled the decretal sum.*
- b. That the mandatory TWENTY ONE (21 DAYS) after service of the statutory notice on the said company lapsed on the 10th April.*
- c. That despite service with the statutory notice the company has failed, refused and/or declined to make good the petitioner's claim **AND/OR** its **TOTALLY UNABLE** to pay the Kshs 1,393,811.29/= which is a **DEBT JUSTIFIABLY DUE** and legally **OWING** to the petitioner within the meaning of "**A DEBT**" under the Insolvency and the Companies Act 2015.*
- d. That the company is insolvent and unable to pay its debt as they fall due hence this petition as the refusal or inability to pay the debt by the company is contrary to the mandatory provisions of the Insolvency and Company Act 2015 hence this petition.*

3. In the petitioner's affidavit in support of the petition, he avers that following the respondents non-payment of the debt due to him, he filed a winding up petition with the Registrar of Companies and that he has paid the sum of Kshs 40,000/- statutory fees against INVESCO INSURANCE COMPANY LIMITED (hereinafter "**the Company**") as shown in the certificate of compliance attached to the affidavit annexure "**SE1**". He further states that he served the mandatory statutory notice upon the Company as shown in annexure "**SE2**".

4. When the matter came up for hearing on 28th October 2018, the petitioner adopted the contents of his petition and supporting affidavit as his testimony in the matter and sought the prayers listed in the petition.

5. Even though the respondent appointed the law firm of **M/S Okongo Wandago & Co.** to act for it in this matter, the said advocates did not file any response to the petition and did not attend court for hearing despite proper service with the hearing notice.

6. I have considered the pleadings filed herein and the testimony of the petitioner. I am satisfied that he has proved his case against the respondent on a balance of probabilities.

7. Consequently, I enter judgment for the petitioner as prayed for in the petition dated 16th April 2019 as follows:

- a. That Invesco Assurance Company Limited be and is hereby wound up as provided for under the provisions of the Companies Act 2015.*
- b. The payment of Kshs 1,393,811.29/= to the petitioner out of the assets of the company in priority.*
- c. That the winding up proceedings be conducted by the Official Receiver.*
- d. I also award the petitioner the costs of this petition.*

Dated, signed and delivered in open court at Nairobi this 7th day of November 2019.

W. A. OKWANY

JUDGE

In the presence of:

Mr. Kinyanjui for Betty Rashid for petitioner.

Court Assistant – Sylvia