

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS
COURT OF KENYA AT NAIROBI

CAUSE NO. 270 OF 2013

JULIUS WAHOME WOKABI.....**CLAIMANT**

VERSUS

INVESCO ASSURANCE COMPANY LIMITED.....**RESPONDENT**

JUDGMENT

1. The Claimant filed suit on 28th February 2013. He averred that he was at all material times to the suit a non-executive director and acting chief executive officer in the Respondent from August 2004 up to November 2007. His terms were Kshs. 250,000/- a month and that on 20th November 2007 he was appointed acting CEO at a salary of 500,000/- plus a company car. He averred that he resigned on 30th November 2007 and as that date was owed 2,636,304/- as remuneration, fees and advances. He thus sought the sums owed as well as costs of the suit plus interest.
2. The Respondent filed a response on 2nd April 2013 and denied that the Claimant was its employee. The Respondent averred that if he was an employee, the salary and remuneration were all paid and that the claim was time barred in terms of Section 80 (sic) of the Employment Act. The Respondent filed a preliminary objection to the suit on 16th October 2013 to the effect that the suit offends Section 90 of the Employment Act.
3. The Claimant testified on 1st December 2015, and stated that he was an auditor, tax and business consultant. He stated that he joined the board of directors of the Respondent till 31st October 2007 and was entitled to director's fees for the period between 2004 and April 2007. He testified that he was owed by the Respondent and this was acknowledged by the Respondent.
4. In cross-examination, he stated that he had not produced evidence of the build up to the fees such as sitting allowance and had provided the Court with the agreement showing he was owed money by the Respondent. He testified that he was holding the vehicle as security but was asked to return it even before he was paid.
5. In re-examination he testified that at the time of entering the agreement there was no contest on the figures.
6. The Respondent did not present a witness or proffer any evidence. The claim by the Claimant was admitted by the Respondent which had an agreement to pay his dues. However, the Claimant filed his claim in 2013, 6 years after the accrual of cause of action in November 2007. In the premises I would be inclined to allow the preliminary objection and strike out the suit but make no order as to costs.

Orders accordingly.

Dated and delivered at Nairobi this 18th day of July 2016

Nzioki wa Makau

JUDGE