



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

CAUSE NO. 270 OF 2013

JULIUS WAHOME WOKABI.....CLAIMANT

VERSUS

INVESCO ASSURANCE COMPANY LIMITED.....RESPONDENT

RULING

1. On 12th March 2015, Hon. Nzioki wa Makau made a ruling pursuant to a notice of preliminary objection dated 16th October 2013 and filed on 12th March 2015 to the effect;

“the law applicable before the commencement of the Employment Act, 2007 is six (6) years and the case was therefore in time.”

2. The matter proceeded on trial and the learned Judge delivered a judgment on 18th July 2016 which contradicted his earlier ruling as follow;

“..... the claimant filed his claim in 2013 six (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.”

3. The salary arrears claimed in this suit is for the period May 2007 to 30th November 2007 when the claimant resigned from employment in the sum of Kshs.1,125,000.00.

4. The retainer fees claimed are up to December 2005 and sitting allowance up to March 2007 in the sum of Kshs.511,304.00. The suit was filed on 28th February 2013.

5. These facts appear *ex facie* the memorandum of claim. In respect of the main claim which is salary arrears in the sum of Kshs.2,125,000.00 the suit was filed within six (6) years from the date the cause of action arose between May to November 2007.

6. This claim is clearly not time barred.

7. With respect to the claim for arrear retainer fees up to December 2005. This claim is clearly time barred. Any sitting allowance that was due up to 28th February 2007 is also time barred.

8. The application for review has merit in that there is an apparent error on the face of the judgment of the learned Judge in respect of time between the date when cause of action arose and the date of filing suit.

The Judge also did not recall that he had already determined the issue of time bar in his earlier ruling which he erroneously purported to overrule in his judgment.

9. The rest of the judgment of the court stands to the effect that;

“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.”

10. To this extent, the court reviews the judgment delivered on 18th July 2016 to enter judgment in favour of the claimant in respect of the arrear salary for the period May 2007 to 30th November 2007 in the sum of Kshs.2,125,000.00.

11. The claim for retainer fees arrears for the period up to December 2005 and sitting allowance arrears to March 2007 are time barred and dismissed therefore.

12. The final order of the court is that;

- a) Judgment delivered on 20th July 2016 is reviewed so as to award the claimant Kshs.2,125,000.00 arrear salary;
- b) The award be paid with interest at court rates from date of filing suit till payment in full;
- c) Costs to follow the outcome.

Dated and delivered at Nairobi this 20th day of December, 2016

MATHEWS NDERI NDUMA

PRINCIPLE JUDGE