



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC.APPLICATION NO. 10 OF 2016

AKIDE & COMPANY ADVOCATES.....APPLICANT

VERSUS

KENINDIA ASSURANCE COMPANY LIMITED.....RESPONDENT

RULING

The applicants' M/s Akide & Company Advocates filed their bill of costs dated 2<sup>nd</sup> April 2016 for taxation before the Deputy Registrar. The respondent filed a notice of Preliminary Objection dated 20<sup>th</sup> April, 2021 raising the following grounds:-

1. THAT the judgment was entered on 27<sup>th</sup> January 2004.

2. THAT the bill in question is dated 2<sup>nd</sup> April 2015 and filed on 14<sup>th</sup> January 2016 for taxation being 12 years after the judgment was delivered.

The objection was heard orally. Counsel for the respondent submits that the bill was filed many years after the completion of the case and is time barred. Counsel urged the court to dismiss the bill.

On his part, Counsel for the applicant submit that a similar application was made by the respondent's former advocates before Justice Sergon who dismissed it. This was in Miscellaneous Application 1037 of 2013. It is contended that the Preliminary Objection does not satisfy the threshold of a Preliminary Objection as established in the case of Mukhisa Biscuit Company case.

The record shows that the applicant was instructed to defend civil suit number **SPMCC No 5184 of 2002 JACKSON K. KAMAU –VS- FLOWERING (K) LTD** before the Nairobi Magistrate's Court. The case seems to have been finalized in the year 2002. The applicant had a series of similar matters and filed bill of costs in the year 2016. Some of the cases had been filed before the Limuru Magistrate's Court.

The applicant contend that a similar issue on limitation was previously raised and Justice Sergon dismissed it. I have perused the ruling of Justice Sergon delivered in Miscellaneous Civil Application No. 667 of 2013. The ruling partly reads as follows:-

**“The applicant avers that the taxing officer did not have jurisdiction to determine the issue of limitation of time of the subject of the bill of costs since the same can only be determined by a judge of the High court. It is argued that the power of the taxing officer is set out under paragraph 13A of the Advocates (Remuneration) Order and does not include determining whether or not the bill is time barred hence the taxing officer exceeded her jurisdiction. It prayed that the taxation be set aside.**

I have perused the ruling dated 8<sup>th</sup> May 2014, where the taxing officer in considering the bill of costs in front of her and ruled that it had been filed 9 years after the matter was finalized contrary to section 4(1) (a) of the Limitations of Actions Act. She proceeded to dismiss the bill of costs for being time barred which triggered the current application before this court. The applicant being aggrieved by the dismissal of the application by the taxing officer, has filed the application seeking to have the orders of the taxing officer set aside for reasons that she lacked the requisite jurisdiction to dismiss the bill of costs for being time barred since the determination as to whether a matter is time barred falls squarely within the jurisdiction of the High Court.

The next issue to consider is whether the bill of costs is indeed time barred. The limitation period for filing a bill of costs starts running from the date of completion of the work that an advocate was intended to do. Halsbury's laws of England 3d

Edition volume 36 at paragraph 233 reads in part as follows:

**"For the purposes of an action on the bill, time begins to run against the solicitor from the date when the work to which it relates was completed and not from the expiration of one month from the delivery of the bill....."**

I have perused the court record. None of the parties have annexed the proceedings of the lower court or the necessary documentation for me to establish when the work was completed and make a just ruling in the matter. The material laced before me is inadequate for me to rule on this issue of the bill of costs being time barred. In the premises and in the interest of justice, I direct that the parties take appropriate date to address the court on the issue of the bill of costs being time barred and the necessary documentation for purposes of establishing whether the bill of costs should be sent to the taxing master for taxation.

Looking at the prayers as set out in the application, the applicant has prayed that this court adjusts the figures and re-assesses the fees due. The applicant is basically asking this court to tax the bill of costs that is yet to be taxed by the taxing master. The law is very clear on who is tasked with the duty of taxing bills. Paragraph 11 of the Advocates (Remuneration) Order is categorical on when the high Court should delve on matters of taxation. The High Court sits as the appellate court in taxation matters upon an aggrieved party filing a reference. That is not the case in this matter since the bill is not yet taxed, and therefore, the court cannot proceed to tax the bill as prayed by the applicant."

Justice Serگون reinstated the bill of costs which had been dismissed as being time barred. It is therefore clear that the ruling of Justice Serگون did not make any finding that the bills are time barred or not. The gist of that ruling is that the taxing master had no jurisdiction to deal with the issue of limitation. Justice Serگون ruling was delivered on 1<sup>st</sup> April, 2016 and he ordered that parties were to take an appropriate date to address the court on the issue of limitation. That being the case, I do find that the Preliminary Objection is in line with the ruling of Justice Serگون.

There is no dispute that the cases that were handled by the applicant were finalized over nine (9) years before the bills were filed in 2016. The applicant did not address the court on when the cases were finalized and what transpired thereafter.

The Halsbury's Laws of England, 4<sup>th</sup> Edition, Vol. 28 at paragraph 879 states as follows:-

**"In relation to continuous work by a solicitor, such as the bringing and prosecuting or defending an action; if a solicitor sues for his costs in an action, the statute of limitation only begins to run from the date of termination of the action or of the lawful ending of the retainer of the solicitor;**

**if there is an appeal from the judgment in the action, time does not begin to run against the solicitor, if he continues to act as such, until the appeal is decided;**

**if judgment has been given and there is no appeal, time runs from the judgment, and subsequent items of costs incidental to the business of the action will not take the earlier items out of the statute.**

**In respect of miscellaneous work done by a solicitor, time under statutory limitation begins to run from the completion of the whole of each piece of work.**

**A solicitor cannot sue a client for costs until the expiration of one month after delivery of a signed bill, but nevertheless time runs against a solicitor from the completion of the work and not from the delivery of the bill. If some only of items included in the bill are statute-barred, the solicitor may recover in respect of the balance."**

In the case of **ABINCHA & CO. ADVOCATES –V- TRIDENT INSURANCE CO. LIMITED (2013) eKLR**, Justice H.P.G. Waweru dealt with a similar matter and observe as follows:-

- 1. The Client's case, with regard to the issue of limitation, is that apart from the deposit paid up-front by the Client as demanded by the Advocate on taking instruction in each matter, upon completion of the work in any such matter the Advocate presented to the Client a fee note that was settled; that it was not until eight (8) to eleven (11) years later that the Advocate presented the bills of costs in question; and that therefore the bills are caught by limitation.**
- 2. The Advocate's answer has been that the various fee notes were never presented as final fee notes, and further, that the Limitation of Actions Act does not apply to advocates' costs.**
- 3. As already seen, any claim or action for an advocate's costs is subject to the statute of limitation. As already seen also, time begins to run from the date of completion of the work or lawful cessation of the retainer. Time does not begin to run from the date of delivery of the bill! Section 48(1) of the Advocates Act therefore cannot offer any defence against limitation.**
- 4. As to whether an advocate/client bill of costs is an action to recover costs, it clearly is. It will be remembered that upon a certificate of taxation being issued, all an advocate need do is apply for judgment under section 51(2) of the Advocates Act. In any case, why should parties go through taxation of a bill of costs if the costs thereby taxed cannot be recovered on account of the statute of limitation?**
- 5. I therefore hold that any of the various bills of costs filed by the Advocate more than six (6) years after completion of the**

**work which he was retained by the Client to do, or after the lawful termination of the retainer in respect of such work, is statute-barred by virtue of section 4(1) (a) of the Limitation of Actions Act.**

In an advocate/client relationship, the general presumption is that there is a contract between the parties whereby the advocate renders legal services to the client at an agreed fee and in case of disagreement such fee can be taxed by the taxing master. That being the case, it follows that upon completion of the services the advocate is tasked to do, he/she is expected to notify the client that the work has been completed and submit a final fee note for settlement. It would be unusual for an advocate to send partial fee notes upon completion of the work he/she is retained to do. Doing so would render the work to be endless. If the work involves litigation in court, upon delivery of a judgment, the advocate is expected to inform the client the outcome of the case. If further instructions are given such as applying for orders of stay of execution or settlement of the decretal sum by instalment, then the advocate's work would be deemed to be continuing.

In the current case, there is no dispute that the work ended over twelve (12) years ago. The advocate is not alleging that further instructions were given by the client. Section 4(1) of the Limitation of Actions Act, Cap 22 Laws of Kenya states as follows:-

**“Actions of contract and tort and certain other actions**

**The following actions may not be brought after the end of six years from the date on which the cause of action accrued—**

**(a) actions founded on contract;**

**(c) actions to enforce an award;**

**(d) actions to recover a sum recoverable by virtue of a written law, other than a penalty or forfeiture or sum by way of penalty or forfeiture;**

**(e) actions, including actions claiming equitable relief, for which no other period of limitation is provided by this Act or by any other written law.”**

Given the facts of the current case, it is established that the applicant/advocate completed the work over twelve (12) years ago. It would not be prudent to call upon the client to settle legal fees for work that was done over twelve years ago. It is not clear why the advocate did not submit his final fee note upon completion of the cases. I do find that the bills of costs are adversely affected by the Limitation of Actions Act and the same are time barred.

The upshot is that the bill of costs was filed after the expiry of over six (6) years after the completion of the work and are therefore time barred. A claim for legal fees is one based on contract. The contract can be implied if there is no written agreement on the legal fees payable. The bill of costs are hereby dismissed for being time barred. I do not wish to make the advocate suffer double tragedy by condemning him to pay costs before this court and before the taxing master. I do order that parties meet their own respective costs.

**DATED AND SIGNED AT NAIROBI THIS 29<sup>TH</sup> DAY OF JUNE 2021**

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**S. CHITEMBWE**

**JUDGE**