



V. Chokaa & Co. Advocates v County Government of Mombasa (Environment and Land Miscellaneous Application E014 of 2022) [2023] KEELC 18986 (KLR) (27 July 2023) (Ruling)

Neutral citation: [2023] KEELC 18986 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E014 OF 2022
NA MATHEKA, J
JULY 27, 2023

BETWEEN

V. CHOKAA & CO. ADVOCATES APPLICANT

AND

COUNTY GOVERNMENT OF MOMBASA RESPONDENT

RULING

1. The application is dated November 17, 2022 and is brought under section 51 (2) of the *Advocates Act* Cap. 16 Laws of Kenya, Rule 7 of the *Advocates Remuneration Order*, order 36 rule (1) (a) of the *Civil Procedure Rules* and Section 3(a) of the *Civil Procedure Act* seeking the following orders;
 1. That Judgment be entered for the Plaintiff as against the Defendant/Respondent in the sum of Kshs 51,982/= in accordance with the Certificate of Taxation of Costs filed with the Plaintiff.
 2. That the Defendant/Respondent to pay the Plaintiff/Applicant the said Sum together with Interests Therein at 14% per annum with effect from November 4, 2022 payment in full.
2. It is made on the grounds that the Cost of this Application be paid for by the Defendant/Respondent. The sum of Kshs51,982/= is the amount taxed costs for Professional work done by the Plaintiff for the Defendant. The said taxed costs neither been set aside nor altered by this Court. That under section 51(2) of the *Advocates Act*, the Plaintiff as an Advocate has the Right to have the Judgement entered in his favour for the costs even without filing the suit for recovery. This suit for recovery of the taxed costs. The Defendant has no defence to the claim by the Plaintiff for his taxed costs.
3. The Respondent raised a preliminary objection and grounds of opposition that the said application is bad in law and incurably defective as it offends the mandatory provisions of the limitation period set out in section 4(1)(a) of the *Limitation of Actions Act* which states that;



- (1) the following actions may not be brought after the end of six years from the date of which the cause of action accrued-
- (b) Actions founded on contract...”
4. That the Applicant was never instructed by the Respondent to act on their behalf in accordance with the provisions of the *Advocates Act* and the Advocates Rules Practice provisions. Lack of material disclosure of the nature of instructions allegedly issued and instructions in executing the same as a matter of law, fact and evidence. That the Application is incompetent, misconceived, bad in law and an abuse of the Court Process.
5. The Respondent has raised a preliminary objection opposing the Application on the ground that it is statute barred. An objection on the ground that a matter is caught up by the law of limitation of actions is a pure point of law as was held by Law JA in the case of *Mukisa Biscuit Manufacturing Co. Ltd -vs- West End Distributors Ltd* (1969) EA 696:
- so far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of the pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration”
6. The preliminary issue to be determined in is whether the advocate-client bill of costs is incompetent for being time barred. A relationship between an advocate and his or her client is a contractual relationship for professional services. The Court of Appeal in the case of *Omulele & Tollo Advocates vs Mount Holdings Limited* (2016) eKLR while discussing the difference between a retainer and retainer agreement defined retainer in the following terms:
- It encompasses the instructions given to an advocate as well as the fees payable thereunder. A retainer need not be written, it can be oral and can even be inferred from the conduct of the parties.”
7. Such a relationship is therefore subject to the *Limitation of Actions Act*, specifically Section 4 (1) of the *Limitation of Actions Act* which provides that an action founded on contract may not be brought after the end of six years from the date on which the cause of action accrued.
8. In the case of *Abincha & Co Advocates vs Trident Insurance Co. Ltd* (2013) eKLR, considered the question of when does time start to run in an action for recovery of legal fees quoted with approval *Halsbury's Laws of England* 4th Edition Volume 28 page 452 at paragraph 879 where the learned authors state as follows:
879. Solicitor's Costs. In relation to continuous work by a solicitor, such as the bringing and prosecuting or defending an action;
1. 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;
 2. 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;



3. 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.
9. 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.”

10. In the present case, the Respondent disputes having instructed the Applicant to defend its interests. Its case is that the Applicant’s bill of costs is time barred having being brought after 6 years. On perusal of the record I find various letters way past 2009 between the parties on the issue of payment of fees to the Applicant. There is no evidence before this court that the retainer had been terminated in 2009 and in the absence of such information this court cannot proceed on the assumption that the bill was filed outside the limitation period. For the foregoing reasons, I find that the Respondent’s preliminary objection is not merited and I find this application is merited and is granted as prayed. Costs to the Applicant.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 27TH DAY OF JULY 2023.

N.A. MATHEKA

JUDGE

