



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. APPLICATION NO. 161 OF 2012

MUSEMBI NDOLO & CO. ADVOCATESAPPLICANT

VERSUS

CANNON ASSURANCE (K) LTDRESPONDENT

RULING

By the Chamber Summons dated **19th December, 2012** filed herein on 20th December 2012 the applicant's advocates seek to set aside a ruling of the taxing officer which struck out their bill of costs for being time barred. They also seek that the bills be remitted to another taxing officer for taxation. The said bills are contained in Miscellaneous Applications Numbers **161,162, 165, 166 all of 2012** which the taxing officer consolidated and heard together.

The brief history of this matter is that by a letter dated 30th April, 2004 Musembi Ndolo. Co. Advocates, the applicant received instructions from Canon Assurance (Kenya) Limited, the Respondent, to represent it at the taxation of certain bills of costs as lead counsel. The firm of Amit Gadhia Advocate was already on record for the Respondent. By a letter dated 10th August, 2004 the Respondent enclosed the bills and reiterated its instructions. A copy of proceedings annexed to the Applicant's application shows that the bills were taxed by the Hon W.B. Mokaya -Deputy Registrar as she then was. On 28/1/2005 with both Rajni K. Somaia and cannon Assurance Co. ltd who were the parties represented by advocates, a Mr. Karanja for Rajni Somaia and Mr.Ndolo for the respondent. The ruling on the taxation was delivered on 16th February, 2005.

When the firm of Musembi Ndolo & Co. advocates filed its advocate bill of costs for taxation for the work done counsel for cannon Assurance raised a preliminary objection which culminated in the bills being struck out for being time barred.

Counsel for the applicant while conceding that the taxing officer correctly held that the relationship between an advocate and his client is one founded on the law of agency hence contract and that the limitation period is therefore six years faulted him for computing time from the date instructions were given rather than from the time the work was completed. He submitted that in this case work was completed on 4th November, 2011 when the last ruling was delivered. By this he means the ruling by Ali-Aroni -J in Kisumu HC Misc Application No. 82 of 2005. The application was opposed. Counsel for Respondent submitted that firstly the bills could not have been taxed as there existed an agreement between the parties fixing the remuneration of the Advocate and secondly that as they had been lodged after six years they were time barred. That the respondent instructed the applicant's firm of advocates to act for it in the taxation of the subject bills is not in dispute. That the advocates duly represented the respondent is not disputed. As I have stated the bills were taxed and a ruling delivered on 16th February, 2005. The instructions had been communicated in a letter dated 30th April, 2004 and another dated 10th August, 2004. I get this from the applicant Advocates' list of documents filed together with this

application. The Advocates lodged their bills for taxation on 20th July, 2012. In all there were six miscellaneous applications. The taxing officer consolidated them and heard the preliminary objection together. So were these taxing bills time barred or was the taxing officer err in so finding. This matter came to this court by way of a reference. Nevertheless the principle that as an appellate court I can only interfere if the taxing officer's finding is based on no evidence, or on a misapprehension of the evidence or If he acted on wrong principles in reading his finding.

Having considered the submissions by the advocates and the law it is my finding that the bills lodged by the advocates on 20/7/2012 were time barred. As I have stated and has been conceded by counsel for the applicant Advocate's the relationship between them and the respondent was contractual. It was **Waweru -J who in Abindhya & Co. Advocates V. T. Fident Insurance Co. Ltd (2013) EKLK** stated that

“ An advocate's claim for costs would be based on the contract for professional services between him and his client. It would be a claim founded on contract. An action to recover such costs would be subject to the limitation period set out in section 4(i) (a) of the Limitation of Actions & Act”.

I agree with him. I do also agree with the submissions by counsel for the applicant that the limitation period begins to run from the date when the work is completed. This is also the proposition in Halsbury's laws of England 3rd Edition volume 36 (cited by the counsel for the applicant) which at paragraph 233 states:

“ 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.....”

The work here was in my view completed on 16/2/2005 when the bills in which the applicant was instructed were taxed. That was the date on which the ruling in respect of all the bills was delivered. With due respect the ruling of Ali-Aroni-J delivered on 4/11/2011 did not relate to the taxations directly. It was made pursuant to an application by **Rajni Somaia** for judgment on the taxed costs. As can be seen from the body of that application the same was secured on Canon Assurance (k) Limited and there is nothing to demonstrate that the applicant's advocate in this matter was instructed in that matter as well. The work having been completed on **16/2/2005** it is evident that by the time the bills were filed on **20/7/2012** seven (7) years had lapsed. They had been caught up by section 64(1) (a) and even (d) of the Limitation of Actions Act. The taxing officer correctly reached his findings. As the issue of the agreement was not raised before the taxing officer I shall make no finding in it but as for the consolidation the miscellaneous causes clearly arose from the same cause of action and the taxing officer cannot be faulted for consolidating them.

In the end I find that this application has not merit. However, given the circumstances of the case, I shall order that it be dismissed with each party bearing its own costs. It is so ordered.

E.N. Maina

Judge

Signed, dated and delivered in Kisumu this 26th day of February, 2015.

In the presence of:-

Miss Ongira advocate holding brief for Mukirenga for the Applicant.

Cc; Moses Okumu

No Appearance for the Respondent.

Miss Ongira: We seek leave to appeal.

Court: Leave is granted.

E.N. MAINA

Judge