



Ngombo t/a Steve Kithi & Co Advocates v County Government of Kilifi (Civil Suit 7 of 2022) [2024] KEHC 16086 (KLR) (17 December 2024) (Judgment)

Neutral citation: [2024] KEHC 16086 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL SUIT 7 OF 2022
SM GITHINJI, J
DECEMBER 17, 2024**

BETWEEN

**STEPHEN KITHI NGOM NGOMBO T/A STEVE KITHI & CO ADVOCATESO
T/A STEVE KITHI & CO ADVOCATES PLAINTIFF**

AND

COUNTY GOVERNMENT OF KILIFI DEFENDANT

JUDGMENT

1. By way of a Plaint dated 9th September 2022, the Plaintiff instituted this suit seeking the following;
 1. Special damages for legal fees due against the Defendant in such sum equivalent to the Kenya Shillings One Billion, Ten Million, Six Hundred Thousand, Seven Hundred (Kshs. 1,010,600,700) comprising;
 - i. Kshs. 505,300,350/=being legal fees due for the first agreement.
 - ii. Kshs. 505,300,350 being legal fees due for the second agreement.
 2. Interest at court rates on all special damage claim herein set out in prayer 1 from 20th February 2014 until payment in full.
 3. Costs.
2. The Plaintiff's case is that on or about 20th December 2013, the Defendant issued the Plaintiff with instructions to negotiate terms of and prepare an agreement between the County Government of Kilifi (as agent) and Raindrops Limited (as agent) involving collection of cess and parking fees revenue projected annually at Kshs. 1,000,000,000 or more for a period of 15 years and conservatively totaling at Kshs. 15,000,000,000 which was the first agreement. The Plaintiffs asserts that he carried out the task as per instructions given, up to the execution of the First Agreement on 20th February 2014 which was duly registered on the same day and the revenue stamp affixed on 3rd April 2014. It is stated that on



20th February 2014, the Defendant issued the plaintiff with instructions to further negotiate the terms of and amend the first agreement which led to the execution of the second agreement on 28th March 2014, registered on the same day and a revenue stamp affixed on 3rd April 2022.

3. The Defendant filed a statement dated 7th December 2022 which statement contains of denials of the Plaintiff's claim in toto.

Evidence at Trial

4. Stephen Kithi Ngombo told the court that he is an advocate who has been in practice for the last 24 years. He stated that the claim before the court is for non-payment of legal fees due and payable by the defendant to the plaintiff in respect of two agreements between the defendant and a company known as Raindrops limited on collection of county revenue. He relied on his pleadings and documents on record and sought the prayers as per the plaint.
5. On cross examination by Mr. Ole Kina counsel for the defendant, he stated that he was further engaged by the county government by email in December 2013 and he fulfilled the terms of engagement in the first contract on 20.2.2014. He stated that his fee was payable upon him writing a fee note to the client. Further, upon completion of the first agreement his fee was payable but he was engaged in negotiation for the second engagement within three days after the first agreement on 28.03.14, and was further engaged until the county asked him to write a termination letter. He added that the High Court ruled on whether the amended agreement superseded the first agreement and paragraph 6 of the agreement stated how he was to be paid. It was also stated that they were to agree with the county Government on when 25% was to be paid. When the agreement was terminated he raised a fee note in 2022 and his fee was never taxed as the fees have been ascertained as per the Advocates Act. That the sum raised in revenue between 20.02.15 and 27.02.15 is known and is the value of the agreement.
6. The Defendant did not testify but the witness statement was adopted as evidence in chief and the plaintiff waived cross examination.

Analysis and Determination

7. The Plaintiff filed written submissions. At the time of writing this ruling, the Defendant had not filed theirs. I have considered the Plaintiff's submissions and the authorities therein. The Plaintiff seeks to have this court enforce the agreements entered into by the Defendant and him.
8. The Parties herein were at liberty to enter into an agreement with respect to remuneration under Section 45 of *Advocates Act* and if in writing and signed by the client –advocate it would be valid and binding. The *Advocates Act* protects advocates fair remuneration on the basis of taxation based on the *Advocates Remuneration Order*, but also in the same vein grants parties freedom of negotiation and agreement on remuneration in a written Agreement and is valid and binding as aforesaid, so long as it is in writing and executed by the client/advocate. The parties are bound by the terms of the contract. It is trite that courts cannot rewrite contracts between parties. However, the Defendant brought my attention to the provision of Section 3 (2) of the *Public Authorities Limitation of Actions Act* Cap 39 which states;

“(2) No proceedings founded on contract shall be brought against the Government or a local authority after the end of three years from the date on which the cause of action accrued.”

9. From the material placed before me, the first agreement is dated 20.02.14 which was amended by the second agreement dated 28.03.14. The fee note in respect of the legal fees was raised on 24.05.22.



It is clear to me that the engagement of the Plaintiff for his services was in respect of drawing the agreement between the Defendant and Raindrops Limited which he dutifully fulfilled when he drafted the agreement between the two parties as per the evidence presented. It is therefore not clear why the Plaintiff brought the claim in the year 2022 which is eight years from the time he completed his task. To this end, the Plaintiff has not offered plausible explanation on the same. Bound, by Section 3 (2) of the [Public Authorities Limitations Act](#), I find that the claim is time barred. The claim cannot therefore be realized through a legal action in a Court of Law but probably through other means like mediation, or rather out of court settlement.

10. As such his claim must fail and given that it's on a legal technicality, with no order as to costs.

JUDGMENT READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 17TH DAY OF DECEMBER, 2024.

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S.M. GITHINJI

JUDGE

In the presence of; -

1. Mr. Ole Kina for the Defendant
2. Mr. Kithi is in person (absent)

