



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
MISC. CIVIL APPLICATION NO 45 OF 2015

OTIENO, RAGOT & COMPANY ADVOCATES.....APPLICANT

VERSUS

GABRIEL NDOLO.....RESPONDENT

RULING

The Advocate filed herein his advocate/client bills of costs dated 27th April 2015 for professional services rendered to the plaintiff in Kisumu ***Chief Magistrate's Court Civil Case No. 360 of 2006 Joseph Arap Agwa v Gabriel Okombo Ndolo***. Before the bill could be taxed, the client/respondent challenged it by a notice of Preliminary Objection filed on 24.6.15, which in essence sought an order to strike out the bill of costs upon the ground that the Advocate's claim for costs, "being a claim founded on a contract for provision of legal services, falls within the purview of section 4 of the Limitation of Actions Act, and is therefore time-barred".

Further to the parties' affidavits, the advocates agreed to have the Preliminary Objection herein disposed of by way of written submissions which they dutifully filed in time to support their clients' respective rival positions

The bill of costs herein is based on an advocate-client relationship for services rendered in Chief Magistrate's Court Civil Case No. 360 of 2006.

The respondent holds the view that time started running from 23rd April 2007 when the plaintiff in Chief Magistrate's Court Civil Case No. 360 of 2006 passed on and that the bill of cost was filed on 27th April 2015, which is about eight (8) years from date of judgment is time-barred.

The applicant conceded that the plaintiff in Chief Magistrate's Court Civil Case No. 360 of 2006 passed on 23rd April 2007, but that he was still on record until a year later when the no application for substitution of the deceased plaintiff was made.

The issue for determination therefore is whether the applicant's bill of costs is time barred. Faced with an almost similar situation, Waweru J in the case of **H.C. Misc application no. 527 of 2011 at Nairobi Abincha & Co. Advocates v Trident Insurance Co. Limited** cited by the respondent herein held:-

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(1) (a) of the Limitation of Actions Act.

Therefore, this being a contractual relationship, the Limitation of Actions Act and specifically Section 4

(1) (a) is applicable to the bill of costs herein. Halsbury's Laws of England 4th Edition Vol. 28 at page 419 paragraph 820, states inter alia that “... ***once there has been a complete cause of action arising out of contract or tort, time begins to run...***”. Further relevant texts from Halsbury's Laws of England 4th Edition Vol. 28 at page 452 paragraph 879 state that:

“... in relation to continuous work by solicitor, such as the bringing and prosecuting or defending of 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 the termination of the action or the lawful ending of the retainer of the solicitor.

As already seen, time begins to run from the date of completion of the work or lawful cessation of the retainer.

Order 24 (3) provides

(1) Where one of two or more plaintiffs dies and the cause of action does not survive or continue to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the cause of action survives or continues, the court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within one year no application is made under sub rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the court may award to him the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased plaintiff:

There is no evidence of the lawful ending of the retainer of the applicant any time before the suit abated for non-substitution. I therefore hold that the time did not start to run until one year after 23rd April 2007.

The Preliminary Objection filed on 30th June 2015 is thus determined in favour of the applicant. It is so ordered.

DATED AND DELIVERED ON THIS 6th DAY OF April 2017

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Clerk - **Winnie**

Applicant - **Mr. Otieno h/b for Mr. Ragot**

Respondent - **No appearance**