



Khalwale & Co Advocates v Devyan Food Industries Kenya Ltd (Formerly Sameer Agriculture & Livestock Co Ltd) (Miscellaneous Application E014 of 2021) [2024] KEELRC 1092 (KLR) (15 May 2024) (Ruling)

Neutral citation: [2024] KEELRC 1092 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
MISCELLANEOUS APPLICATION E014 OF 2021
S RADIDO, J
MAY 15, 2024
IN THE MATTER OF ADVOCATE/CLIENT BILL OF COSTS
AND
IN THE MATTER OF THE ADVOCATES REMUNERATION (AMENDMENT) ORDER
AND
IN THE MATTER OF TAXATION OF COSTS

BETWEEN

KHALWALE & CO ADVOCATES APPLICANT

AND

DEVYAN FOOD INDUSTRIES KENYA LTD (FORMERLY SAMEER AGRICULTURE & LIVESTOCK CO LTD) RESPONDENT

RULING

1. On 19 March 2024, the Taxing Officer found that an advocate/client Bill of Costs filed by Khalwale & Co Advocates (the advocate) dated 15 February 2021 was statute barred and dismissed it.
2. The advocate was aggrieved and he filed a Reference seeking orders:
 - i. The Honourable Court be pleased to vacate and set aside in its entirety the Ruling of the Hon F.M. Rashid (M) dated and delivered on 19.3.2024 dismissing the Advocate-Client Bill of Costs dated 15.02.2021.



- ii. The Honourable Court do find that the Taxing Master erred in law in holding that the Bill of Costs was time-barred.
 - iii. The Honourable Court be pleased to refer the Advocate-Client Bill of Costs dated 15.02.2021 for a fresh taxation by a Taxing Officer.
 - iv. In the alternative, the Honourable Court be pleased to re-tax the Advocate-Client Bill of Costs dated 15.02.2021 herein.
 - v. Costs of the application be provided for.
3. The advocate's case was that the Taxing Officer misdirected herself in law in concluding that the Bill of Costs was time-barred since he, the advocate was on a continuous retainer and the Bill of Costs was filed within 2 years of the termination of the retainer on 30 September 2018.
 4. The Respondent filed a replying affidavit in opposition to the Reference on 19 April 2024. In the affidavit, it was averred that the Taxing Officer did not err in law as the action was based on contract and the advocate had been presented the Bill more than 6 years after the cause of action arose.
 5. According to the affidavit, the advocate had last rendered service on 29 September 2014 while the Bill of Costs was lodged in Court on 15 February 2021. The Respondent invoked the time-barred set out in section 4(1) of the *Limitation of Actions Act*.
 6. The Court gave directions on 22 April 2024, and the advocate filed his submissions on 2 May 2024 and the Respondent on 6 May 2024.
 7. The Court has considered the Summons, affidavits and submissions.
 8. The advocate acted for the Respondent in Kisumu Cause No 326 of 2013, Eric Onyango Ombara v Devyan Food Industries Kenya Ltd, and the Cause was terminated on 29 September 2014. The advocate only filed a Bill of Costs on 15 February 2021.
 9. Before lodging the Bill, the advocate did not send an invoice/fee note to the Respondent.
 10. The advocate's explanation for not raising an invoice or fee note was that he was on a retainer which was terminated on 30 September 2018.
 11. In *Akide & Company Advocates v Kenindia Assurance Company Limited* (2021) eKLR, the Court held that:

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.

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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.

12. In *Mwangi Kengara & Co Advocates v Invesco Assurance Company Limited* (2017) eKLR, the Court was confronted with the question of whether time started running on the last date the advocate rendered his services as per his bill of cost. The Court held that, in the absence of a moratorium



suspending all legal claims against the client, time would start running from when the advocate last rendered his services.

13. A retainer ordinarily signifies that an advocate would be at the call of a client to provide legal services when called upon.
14. Once any particular legal service is completed, the advocate would be expected to raise an invoice or fee note despite the existence of the retainer, for each instruction forms a distinct contract.
15. The task the Respondent gave the advocate instructions to carry out was completed on 29 September 2014, and that is when the time for purposes of limitation started to run.
16. The advocate did not bring his action for legal fees within the prescribed limitation period in section 4(1) of the *Limitation of Actions Act*.

Orders

17. The Court finds no merit in the Reference and it is dismissed with costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 15TH DAY OF MAY 2024.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Applicant Khalwale & Co. Advocates

For Respondent Eliud Maina Karanja Advocates

Court Assistant Chemwolo

