



V Chokaa & Co Advocates v County Government of Mombasa (Environment and Land Miscellaneous Application E089 of 2022) [2024] KEELC 129 (KLR) (25 January 2024) (Ruling)

Neutral citation: [2024] KEELC 129 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E089 OF 2022
NA MATHEKA, J
JANUARY 25, 2024

BETWEEN

V CHOKAA & CO ADVOCATES PLAINTIFF

AND

COUNTY GOVERNMENT OF MOMBASA DEFENDANT

RULING

1. The application is dated 30th June 2023 and is brought under section 51 (2) 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 the sum or Kshs.129,480.00/= in accordance With the Certificate 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 14th February 2022 until payment in full.
 3. The costs of the application.
2. It is based on the grounds that the sum of Kshs. 129,480/= is the amount taxed costs Professional work done by the Plaintiff for the Defendant. The said costs have neither been set aside nor altered by this Court. Under section 51(2) Advocates of the Plaintiff as an Advocate has the Right to have the judgment entered in its favour the costs even without filing the suit for recovery. That this suit for recovery of the taxed costs. The Defendant has no defence to the claim the Plaintiff for his taxed costs.
3. That in response to the said Application for taxation the Respondent raised an Objection to the Bill of Costs under Section 4 the Limitation of Actions that the Action was time barred. That the application for Taxation under Section 51(1) of the *Advocates Act* is not an Action i.e. a suit but nevertheless the Deputy Registrar agreed with the Respondent and struck out the Bill of Cost (Annexed and Marked



VCAI is a copy of the Ruling). That if the legality of the Bills or Cost was under the question it's a matter that would have been referred to the judge and the Deputy Registrar had Jurisdiction to deal with.

4. This court has considered the application and the submissions therein. The procedure for the challenge of a Taxing Master's decision is provided under Rule 11 of the Advocates Remuneration Order which provides as follows:

- (1) Should any party object to the decision of the taxing officer, he may within 14 days after the decision give notice in writing to the taxing officer of the items of taxation to which the objects.
- (2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.”

5. The Certificate of Costs provides the basis for exercise of jurisdiction by the court to enter judgment for the taxed costs in accordance with Section 51(2) of the [Advocates Act](#) below;

The certificate of a taxing officer by whom it has been taxed shall, unless it is set aside or altered by the court, be final as to the amount of the costs covered thereby, and the court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

6. Similar position was reiterated in the case of Musyoka & Wambua Advocates vs Rustam Hira Advocate (2006) eKLR where it was held that;

Section 51 of the Act makes general provisions as to taxation, as the marginal note indicates. One of those provisions is that the court has discretion to enter judgment on a Certificate of Taxation which has not been set aside or altered, where there is no dispute as to retainer. This in my view is a mode of recovery of taxed costs provided by law, in addition to filing of suit.....

7. The procedure provided in section 51(2) of the [Advocates Act](#) aids expeditious disposal of cases relating to recovery of advocate-client costs as long as: (1) the costs have been taxed by and certified under the hand of the taxing master by a Certificate of Costs; (2) the Certificate of Costs has not been set aside or stayed or appealed against on a reference filed upon it; and (3) there is no dispute on retainer. In such case, judgment is ordinarily entered in the sum in the Certificate of Costs upon application by the advocate. The application may be commenced by way of a Notice of Motion which in law is potent tool for originating a suit.

8. It is not in dispute that the said decision by the Taxing Officer has not been set aside and/or altered, neither is there a reference that has been filed by the Respondent herein against the said decision.

9. The Court in Lesinko Njororge & Gathogo Advocates vs Invesco Assurance Co. Ltd (2021) eKLR when dealing with a similar application held as hereunder;

The Certificate of Costs provides the basis for exercise of jurisdiction by the court to enter judgment for the taxed costs in accordance with Section 51(2) of the [Advocates Act](#) below:

“The certificate of a taxing officer by whom it has been taxed shall, unless it is set aside or altered by the court, be final as to the amount of the costs covered thereby, and the court may make such order in relation thereto as it thinks fit, including,



in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

10. In the case of *Lubulellah & Associates Advocates vs N K Brothers Limited* (2014) eKLR the Court stated as follows:

The law is very clear that once a taxing master has taxed the costs, issued a Certificate of costs and there is no reference against his ruling or there has been a ruling and a determination made and not set aside and/or altered, no other action would be required from the court save to enter judgment. An applicant is not required to file suit for the recovery of costs. The certificate of costs is final as to the amounts of the costs and the court would be quite in order to enter judgment in favour of the Applicant against the Respondent herein for the taxed sum indicated in the Certificate of Taxation that was issued on 25th November 2012.”

11. The holding *Lubulellah & Associates Advocates vs N K Brothers Limited* (supra) was reiterated by the Court in the case of *Lesinko Njoroge & Gathogo Advocates vs Invesco Assurance Co. Ltd* (supra) where it was stated thus:

The procedure provided in section 51(2) of the *Advocates Act* aids expeditious disposal of cases relating to recovery of advocate-client costs as long as: (1) the costs have been taxed by and certified under the hand of the taxing master by a Certificate of Costs; (2) the Certificate of Costs has not been set aside or stayed or appealed against on a reference filed upon it; and (3) there is no dispute on retainer. In such case, judgment is ordinarily entered in the sum in the Certificate of Costs upon application by the advocate. The application may be commenced by way of a Notice of Motion which in law is potent tool for originating a suit.”

12. The applicant herein has also sought interest at 14% from the date of taxation until payment in full pursuant to Rule 7 of the Advocates Remuneration Order which states as hereunder-

An advocate may charge interest at 14% per annum on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full”.

13. Be that as it may, in the present case, there is a dispute of retainer of the Advocate to act in the matter for which costs were taxed. The Respondent stated that the bill of costs before the taxing master is statute barred. As I have stated in numerous similar matters between the same parties. 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.”

14. 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.

15. 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.

16. 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.
17. 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.”
18. In the present case, the Respondent does not dispute having instructed the Applicant to defend its interests. Their case is that the Applicant's bill of costs is time barred having being brought after 6 years. As I have ruled in similar cases I find that 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 advocate. 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 and status of the rates payment. I find that 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 application is merited and I grant it as prayed.
19. It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 25TH DAY OF JANUARY 2024.

N.A. MATHEKA

JUDGE

