



REPUBLIC OF KENYA



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Khalwale & Co Advocates v Devyan Food Industries Ltd (formerly Sameer Agricultural & Livestock Co Ltd) (Miscellaneous Application E014 of 2021) [2023] KEELRC 1216 (KLR) (24 May 2023) (Ruling)

Neutral citation: [2023] KEELRC 1216 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
MISCELLANEOUS APPLICATION E014 OF 2021

S RADIDO, J

MAY 24, 2023

BETWEEN

KHALWALE & CO ADVOCATES APPLICANT

AND

DEVYAN FOOD INDUSTRIES LTD (FORMERLY SAMEEER AGRICULTURAL & LIVESTOCK CO LTD) RESPONDENT

RULING

1. Khalwale & Co Advocates (the applicant) filed an advocate/client bill of costs against Devyan Food Industries Ltd (the Respondent) on February 22, 2021.
2. On May 4, 2021, the Respondent filed a Motion seeking orders:
 - (a) That this Honourable Court be pleased to issue a temporary stay of taxation of the bill of costs in Miscellaneous Application No E12 of 2021, Miscellaneous Application No E13 of 2021 and Miscellaneous Application No E14 of 2021 pending the hearing and determination of this application.
 - (b) That this Honourable Court be pleased to grant leave to issue a third Party notice against Eflex Consulting.
 - (c) That this Honourable Court be pleased to dismiss the Respondent's Bill of Costs against the applicant in Miscellaneous Application No E12 of 2021, Miscellaneous Application No E13 of 2021 and Miscellaneous Application No E14 of 2021.
 - (d) That costs of this suit be provided for.
3. The Court heard the application and delivered a Ruling on November 17, 2021. The Court dismissed the application.



4. On April 7, 2022, the Respondent filed another Motion seeking orders:
 - (1) ...
 - (2) That the Preliminary Objection dated February 4, 2022 and filed on March 16, 2022 be deemed as duly filed and admitted to the Court record.
 - (3) That the Preliminary Objection dated February 4, 2022 and filed on March 16, 2022 be heard and determined in the first instance.
5. The Respondent contended in the Notice of Preliminary Objection that:
 - (1) The taxation proceedings against the Respondent herein is statute barred pursuant to section 4(2) of the *Limitation of Actions Act*.
6. The Duty Judge heard the Motion on April 13, 2022 and directed that it be placed before the Deputy Registrar for further directions.
7. On May 27, 2022, the Deputy Registrar directed that the application be placed before the Judge on August 2, 2022.
8. However, the application came before the Deputy Registrar again on August 2, 2022, when the Respondent urged that it be allowed.
9. The advocate on his part informed the Court that the application had not been served and she directed that service be effected.
10. The application was mentioned on August 31, 2022 and September 7, 2022. The advocate filed a replying affidavit in response to the application on October 11, 2022.
11. On November 1, 2022, despite having filed an affidavit, the advocate informed the Court yet again that he had not been served and the Deputy Registrar directed the Respondent to serve him.
12. The Respondent filed a further affidavit and submissions on January 26, 2023.
13. On March 14, 2023, the advocate requested the Deputy Registrar to place the application before a Judge and the application was placed before me on 28 March 2023 and pursuant to leave, the advocate filed an affidavit in reply to the Preliminary Objection on April 18, 2023.
14. The Court has considered the Motion dated April 4, 2022 (Preliminary Objection) and filed in Court on April 7, 2022, the affidavits and submissions and come to the view that the application is not only misguided but an attempt to delay the taxation of the advocate's bill of costs.
15. The Court is of that view because a Preliminary Objection (based on a pure point of law) can be filed and/or raised at any point in time during proceedings without securing leave.
16. It cannot be that the Respondent's advocate is not aware of that legal position.
17. Further and considering that the Preliminary Objection relates to the taxation of a bill of costs, any such objection should be dealt with by the Taxing Officer, as it is not within the province of the Court to usurp the mandate of the Taxing Officer and hear and determine any objections to the taxation of an advocates bill of costs.
18. The function of hearing and determining such a defence lies squarely within the jurisdiction of the Taxing Officer at the first instance.



Conclusion and Orders

19. For the above reasons, the Court finds no merit in the Respondent's Motion filed in Court on April 4, 2022, and it is dismissed with costs to be paid personally by the Respondent's advocate on record.
20. In order to achieve an expeditious and proportionate determination of the bill of costs which arises from the dispute filed in the Court in 2013, the Court directs the Taxing Officer to tax the bill on a priority basis.
21. The Respondent should be at liberty to raise any and all defences and objections it may have to the taxation before the Taxing Officer.

DELIVERED VIRTUALLY, DATED, AND SIGNED IN KISUMU ON THIS 24TH DAY OF MAY 2023.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For applicant Khalwale & Co. Advocates

For Respondent Eliud Maina Karanja Advocates

Court Assistant Chrispo Aura

