

**SUPREME COURT OF NIGERIA**  
4TH MARCH, 1994 SC. 2-S1/1991  
**CORAM:- M. L. UWAI, E. O. OGWUEGBU,**  
**U. MOHAMMED, Y. O. ADIO, A. I. IGUH, JJSC.**

CHUKA OKOLI & ASSOCIATES ..... APPELLANT  
AND  
CRUSADER INSURANCE CO. NIG LTD. .... RESPONDENT

---

***LIMITATION***

***OF ACTIONS*** - Statute Bar - Legal Practitioners Act - Application for taxation of bill of charges - Brought after the 12 months 'imitation period' - Is statute barred.

***STATUTES*** - Construction - Legal Practitioners Act S.17(3) (b) - No Distinction between bill of charges delivered for completed and non completed work - Disputed bills are not exempted from operations of the said section.

**FACTS**

The Appellant, a firm of legal practitioners was retained by the Respondent to defend it and pursue its counterclaim in a suit filed against the Respondent before the Lagos High Court. Appellant's fees as accepted by the Respondent was N55,000.00. Respondent paid the sum of N10,000.00 upon the receipt of bill of charges from Appellant and Appellant commenced appearances in the matter. After Appellant had appeared in the matter for about 3 years, Respondent unilaterally repudiated the contract and retained the services of another counsel. Appellant made a demand for balance of the agreed fees. Respondent filed a motion before the High Court claiming an order for taxation of the Appellant's bill of charges issued to Respondent pursuant to which part payment of the legal fees were paid. Respondent also sought leave to change its counsel and to recover all documents delivered to Appellant for prosecution of the case.

The trial court granted all the prayers sought by the Respondent. Appellant's appeal to the Court of Appeal was dismissed. Being dissatisfied, Appellant has further appealed to the Supreme Court to determine inter alia, whether the application for taxation of the bill of charges brought after two years and five months from the delivery of the said bill was statute barred.

**HELD** (unanimously allowing the appeal)

1. Although the trial Judge made no finding on the limitation period raised and argued by the Appellants, the application was clearly brought outside the statutory period and was caught by S.17(3) of the Legal Practitioners Act. (p78 L12)

2. As the trial Judge did not consider the limitation period, he did not determine if there were special reasons for making the order for taxation after the expiration of twelve months (limitation) from the date of the delivery of the bill. The Respondents made no application for enlargement of time within which to apply for taxation of the bill. Thus, the trial Judge's order for taxation is a nullity. (p78 L16)

3. The submission that S.17(3) (b) of the Legal Practitioners Act made no distinction between bills delivered for completed work and non-completed work is correct. Also, the said section of the Act did not exempt disputed bills from its operation. (p78 L22)

**REPRESENTATION:**

Mrs. N.J. Okoli with E.B. Obi Esq. for the Appellant.

Mr. L.A. Adeniji with Miss A.A. Balogun for the Respondent.

**CASE REFERRED TO**

Aburime v. Nigeria Ports Authority (1978) 4 SC. 111

**STATUTES & RULES REFERRED TO**

High Court of Lagos (Civil Procedure) Rules 0.4

Legal Practitioners Decree No. 15 of 1975 SS. 15(4), 16, 14, 17

Solicitors Act of the United Kingdom 1974 S. 63.

**LEAD JUDGMENT BY OGWUEGBU JSC**

This appeal arose from the proceeding initiated by the respondents herein in the High Court of Lagos State sitting in Lagos. By a motion on notice brought under Order 4 of the High Court of Lagos (Civil Procedure) Rules, 1972 and Sections 15(4) and 16 of the Legal Practitioner Decree No. 15 of 1975, the respondents prayed the court for the following orders:

*"1. Leave to change its counsel that is Messr. Chuka Okoli and Associates of Investment House. 21/25 Broad Street, Lagos.*

*2. For taxation of the bill of charges of Messrs Chuka Okoli and Associates of 21/25 Broad Street, Lagos dated the 9th of September, 1985.*

*3. For an order that pending the taxation of the said bill (and subject to the giving of a suitable undertaking) the firm Messrs Chuka Okoli and Associates of 21/25 Broad Street, Lagos to deliver to the defendant/applicant all documents handed over to that firm for the prosecution of this case on its behalf."*

This application was filed on 27th September, 1985. The facts of the case are that the respondents retained the appellants who are legal practitioners to conduct the defence of a suit filed by one Joseph Nahman against the respondents in the High Court of Lagos State (Suit No. LD/985/82). The appellants were also retained to prosecute a counter-claim in the same suit.

There were exchanges of letters between the parties as to the fees payable by the respondents to the appellants for their services. In the course of the correspondences, an agreement was reached for the payment of the sum of N55,000.00 to the appellants for the defence of the said suit LD/985/82 together with the counter-claim.

Following the agreement, the appellants delivered a bill of charges pursuant to S.14 of the Legal Practitioners Act, 1975 for the agreed remuneration on 18th April, 1983 (See pages 81-83 of the record of appeal) On receipt of the bill of charges, the respondents by a letter dated 26/4/83, made a part payment of N10,000.00 to the appellants.

The appellants having accepted the brief, entered appearance, filed pleadings and took all procedural steps in the conduct of the defence and the counter-claim. They also made court appearances spanning over a period of three years.

The respondents unilaterally repudiated the said contract by a letter dated 21st August, 1985 and retained the services of another counsel. Thereupon, the appellants on 24th September, 1985 made a demand for the immediate payment of the balance of the agreed fees (N45,302.00),

The above are the summary of the facts that gave rise to the proceedings leading to this appeal.

The court of trial granted respondents leave to change counsel and ordered the appellants to deliver all documents handed over to them for the prosecution of the case to the respondents, Prayer two was referred to the Assistant Chief Registrar of the High Court for taxation.

The appellants were not satisfied with the orders made by the trial court and appealed to the Court of Appeal. Lagos Division which court dismissed their appeal. They have further appealed to this court.

The issues formulated by the appellants as arising for determination  
5 having regard to the grounds of appeal filed are as follows:-

(i) *Whether the application for taxation of the bill of charges brought after two years and five months from the delivery of tile said bill of charges was statute barred,*

(ii) *Whether there was binding contract for an agreed amount of  
10 fees payable between the appellants and the respondents for which a bill of costs was delivered and if the answer is yes, whether it was proper to refer the assessment of damages for the repudiation of the said contract to a taxing officer to be ascertained on quantum meruit basis in the face of express provision for remuneration which the contract between the parties  
15 contained.*

(iii) *Whether the appellants as legal practitioners could be compelled to deliver up documents held under a retaining lien when their fees were unpaid,"*

On their part, the respondents identified two issues for determination:-  
20

*"1. Whether the learned justices of the Court of Appeal were right in confirming the learned trial Judge's order referring the appellant's bill of charges to the taxing master; having regard to the circumstances revealed by the affidavit evidence before the court?"*

25 *2. Whether the relationship between the appellant and the respondent warrants treatment of the termination of his instructions as would apply to assessment of damages of an ordinary contract."*

The issues formulated by the appellants are in line with the grounds of appeal filed and are preferred to those of the respondent which do not  
30 cover all the grounds of appeal.

Arguing the appeal, Mrs. Okoli, learned counsel for the appellants urged the court to answer the first issue in the affirmative. She submitted in her brief of argument that the application for taxation of the bill of charges of the appellants was statute barred and ought not to have been entertained.

35

It was her contention that the trial court made no finding on this issue which was raised in the counter-affidavit of the appellants and in the submissions in that court. We were referred to page 90 lines 17- 22 and page 106 lines 30-32. Counsel also attacked the finding of the court below that the

claim is not caught by S.16(3) of the Legal Practitioners Act, 1975 on the ground that it is not a bill of charges that relates to a completed work.

Learned appellants' counsel referred the court to S. 18(1) of the Legal Practitioners Act supra and the definition of "charges" in S. 15(2)(a) of the said Act. She stated that the Legal Practitioners Act did not exempt disputed bills from the provisions of S. 16(3)(b) of the Act nor was any distinction made between bills delivered for completed or non-completed work.

It was further argued on behalf of the appellants that it is the usual practice for bills to be delivered before the work is completed and that taxation of a bill of charges will in all cases be statute barred if application is commenced more than twelve months from the date of delivery; and as the bill was based on agreed amount of fees, it was not a disputed bill part of it having in fact been paid.

We were urged to hold that whether a bill had been paid or not and whether disputed or not are not relevant to the application for taxation being statute barred under S. 16(3)(b) of the 1975 Act.

In reply to the above issue, the learned respondents' counsel submitted that the contention of the learned counsel for the appellants that the application of the respondent for reference to the Taxing Master brought after two years and five months as being statute barred is misconceived. He submitted that S.16(3)(b) of the Legal Practitioners Act, 1975 is not applicable to the facts of this case. He stated that the peculiar facts of this case is that although parties agreed on instructions and acceptance of same for a fee of N55,00.00 the mode of payment was not agreed upon and this led to the termination of the appellants' instructions which also led to the application on which this appeal is founded.

He submitted that S.18(1) of the 1975 Act relied upon by the appellants applies to completed matters and the appellants' instructions were determined before commencement of trial and therefore, they could not be said to have conducted the respondents' defence in the matter to enable them charge for same within the purview of S.18(1) of the said Act.

Counsel referred the court to S.63 of the Solicitors' Act, 1974 of the United Kingdom. We were urged to reject the contention of the appellants on the applicability of the provisions of S.16(3)(b) of the Legal Practitioners Act, 1975 and confirm that the application for reference was properly before the trial court.

As was rightly submitted by the appellants in their brief of argument, the learned trial Judge did not make any finding on the limitation of action which was raised in paragraph 12 of the counter-affidavit of the appellants which reads;

5       *"12. That the Bill of costs dated 18th April 1993 delivered to the applicant with the letter Exhibit 10 annexed to the applicant's affidavit, had remained unsettled even after a period of 2 years and five months (29 months) had elapsed."*

In opposing the application for taxation of the bill of charges, Mr. H.T.O. Coker. S.A.N. for the appellants at page 106 lines 28 - 32 of the record submitted:

10       *"..... that the court cannot order any taxation as the parties have agreed on remuneration. The application is statute barred as it was not brought within 12months (Section 16(3) Legal Practitioners Decree. 15 1975),"*

One of the five issues canvassed by the appellants in the court below is whether a bill of costs delivered by a legal practitioner can properly be referred to a taxing officer for taxation when the application for taxation was statute barred and leave was never sought or granted to present the same.

20

On this issue the court below had this to say:

25       *"With regard to the issue that this action is statute barred it is my view that in the circumstances of this case, the claim herein is not caught by Section 16(3) of the Legal Practitioners Act (1975) because it is not a Bill of charges that relates to a completed work it is a disputed bill of charges and in any event, the bill had not been paid. Section 16(3)(4) relied upon by the counsel for the appellant to say that the action is statute barred is not applicable to the facts of this case."* (See page 198 lines 26 - 33 of the record).

I will now turn to the relevant provisions of the Legal Practitioners Act Cap. 207 Vol. II. Laws of the Federation of Nigeria, 1990 and these are sections 16, 17 and 19. They provide as follows:

30       *"16(1) Subject to the provisions of the Act, a legal practitioner shall be entitled to recover his charges by action in any court of competent jurisdiction.*

35       *(2) Subject as aforesaid a legal practitioner shall not be entitled to begin an action to recover his charges unless -*

*(a) a bill of charges containing particulars of the principal items included in the bill and signed by him*

*,..... has been served on the client personally*

or left for him at his last address as known to the practitioner or sent by post addressed to the client at that address; and

(b) the period of one month beginning with the date of delivery of the bill has expired."

"17(1) Except where a direction providing for the giving of security is given under subsection (3) of S. 16 of this Act and security is not given in accordance with the direction, the court shall, on an application made by a client within the period of one month from the date on which a bill of charges was delivered on him, order that the bill be taxed and no action to recover the charges shall be begun until the taxation is completed. 10

(2) Subject to the provisions of subsection (3) of this section, the court may if it thinks fit, on an application made after the expiration of the period aforesaid by the legal practitioner or (except as aforesaid) by the client in question - 15

(a) order that the bill shall be taxed;

(b) .....

(3) No order shall be made under subsection (2) of this action.

(a) in any case, after the period of twelve months from the date on which the bill in question was paid; 20

(b) except in a case where the court determines that there are special reasons for making such an order, if twelve months have expired since the date of the delivery of the bill or if judgment has been given in an action to recover the charges in question ..... " 25

"19(1) Without prejudice to the provisions of S. 24 of this Act, in the last foregoing sections and this section (hereinafter in this section referred to as "the remuneration provisions") the following expressions have the following meanings unless the context otherwise requires, that is to say - 30

"bill of charges" means such a bill as is mentioned in paragraph (a) of subsection (2) of S. 16 of this Act;

"Charges" means any charges (whether by way of fees. Disbursements, expenses or otherwise) in respect of anything done by a legal practitioner in his capacity as a legal practitioner..... " 35

The following facts are not in dispute between the parties:-

(a) that the appellants delivered their bill of charges to the respon-

dents on 18th April, 1983 in accordance with S.16(2) & (3) of the Act and  
 (b) the respondents brought their application for taxation of the  
 bill of charges more than two years and five months from the delivery of the  
 5 said bill.

Section 19(1) defined "bill of charges" and "charges"

"Bill of charges" means a bill as is mentioned in S.16(2)(a) of the  
 Act and "charges" means any charges (whether by way of fees, disburse-  
ments etc) in respect of anything done by a legal practitioner in his capacity as  
 10 a legal practitioner.

(the italics is for emphasis only)

As I pointed out above, the learned trial Judge made no finding on  
 the limitation period which was raised and argued by the appellant. The appli-  
 cation was clearly brought outside the statutory period, It was caught by  
 15 S.17(3) of the Act.

In as much as the trial Judge did not consider the limitation period, he  
 did not therefore determine if there were special reasons for making the order  
 for taxation after the expiration of twelve months from the date of the delivery  
 of the bill.

20 The respondents made no application for enlargement of time within  
 which to apply for taxation of the bill. The order made by the trial Judge for  
 taxation is therefore a nullity.

I agree entirely with the submission of the learned appellants' counsel  
 that S.17(3)(b) made no distinction between bills delivered for completed  
 25 work and non-completed work. Subsection 3(b) of S. 17 of the Act did not also  
 exempt disputed bills from its operation. In any case these considerations by  
 the court below are completely irrelevant to the application for taxation made  
 outside the period of twelve months from the delivery of the bill. The court  
 below in my humble view was therefore in error when it held that the respon-  
 30 dents' application was not caught by S.17(3)(b) of the Legal Practitioners Act  
 Cap. 207 Laws of the Federation of Nigeria, 1990. This appeal succeeds on  
 issue one. In view of the above conclusion. it is not necessary for me to  
 consider issue two. Question three is no longer alive issue since the docu-  
 ments had been delivered to the respondents. The case of Aburime v. Nigerian  
 35 Ports Authority (1978) 4 S.C. 111 cited by both learned counsel does not call  
 for my consideration as it falls within issue number two.

The appeal is allowed. The decision of the Court of Appeal as well as  
 that of the High Court are hereby set aside. The application to the High Court  
 is hereby dismissed with N1,000.00 costs in favour of the appellants.



**UWAIS JSC**

I have had the opportunity of reading in draft the judgment read by my brother Ogwuegbu, J.S.C. I agree with the judgment and I have nothing more to add.

Consequently, the appeal is hereby allowed. The decisions of the lower court are set aside. The application on notice filed in the High Court by the respondent is refused and it is hereby dismissed. The costs in the appeal assessed to be N1,000.00 are hereby awarded to the appellants against the respondent.

---

**MOHAMMED JSC**

I have had the privilege of reading the opinion of my learned brother, Ogwuegbu, J.S.C. in the judgment just read, in draft and I agree with him that there is merit in this appeal. For the reasons given, which left nothing for me to add. I shall allow the appeal. I award N1,000.00 costs in favour of the appellant.

---

**ADIO JSC**

I have had the privilege of reading in advance, the judgment just delivered by my learned brother. Ogwuegbu, J.S.C. and I agree with it. I too allow the appeal and I abide by the consequential orders including the order for costs.

---

**IGUH JSC**

I have had the privilege of reading, in draft, the lead judgment of my learned brother Ogwuegbu, J.S.C. just delivered. I am in agreement with his reasoning and conclusion that this appeal be allowed.

The appellants who are legal practitioners were retained by the respondent to conduct his defence and prosecute a counter-claim in suit No. LD/985/82 at the High Court of Lagos State. An agreement was reached between them as to the total professional fees that were payable to the appellants by the respondent. There was however no agreement on the timing for the payment of the said fees.

Following the agreement on fees, the appellants delivered a bill of charges to the respondent for the agreed remuneration on the 18th April, 1983. This, the respondent duly accepted and infact made some part payment in respect thereof to the appellants. The appellants having accepted the brief acted for the respondent for some three years, settled and filed the respondent's pleadings in the suit and put in some court appearances on behalf of their

client.

However, by a letter dated the 21st August, 1985, the respondent repudiated the contract between the parties and debriefed the appellants. Following this development, the respondent applied inter alia for an order for the taxation of the bill of charges served upon it by the appellants. This  
5 application was filed on the 27th September, 1985.

It was contended on behalf of the appellants at the hearing that the application was statute barred. Perhaps due to some inadvertence, the trial court made no finding on this vital issue. The learned trial Judge however  
10 found for the respondent and referred the matter to the Assistant Chief Registrar of the court for taxation of the appellants bill of charges. The appellants being dissatisfied with this decision appealed to the Court of Appeal which dismissed their appeal. They have now further appealed to this court against the said decision of the Court of Appeal which ruled that the respondent's  
15 application was not caught by any Limitation Law and confirmed the decision of the trial court.

My comments will be limited to issue (i) raised in the appellant's brief which questions as follows:-

*"(i) Whether the application for taxation of a bill of charges brought  
20 after two years and five months from the delivery of the said bill of charges was statute barred."*

It must be stressed that application for taxation of charges are mainly governed by the provisions of section 17 of the Legal Practitioners Act, Cap. 207, Laws of the Federation of Nigeria, 1990. This section of the law provides  
25 as follows:-

*"17(1) Except where a direction providing for the giving of security is given under subsection (3) of section 16 of this Act and security is not given in accordance with the direction, the court shall, on an application made by a client within the period of one month from the date on which a bill  
30 of charges was delivered to him, order that the bill shall be taxed and that no action to recover the charges shall be begun until the taxation is completed.*

*(2) Subject to the provisions of subsection (3) of this section, the court may if it thinks fit, on an application made after the expiration of the period aforesaid by the legal practitioner or (except as aforesaid) by the  
35 client in question -*

*(a) order that the bill shall be taxed:*

*(b) order that until the taxation is completed no action to recover the charges mentioned in the bill shall be stayed.*

*and an order under the subsection may be made on such terms*

*(other than terms as to the costs of taxation) as the court may determine.*

*(3) No Order shall be made under subsection (2) of this section -*

*(a) in any case, after the period of twelve months from the date on which the bill in question was paid:*

*(b) except in a case where the court determines that there are special reasons for making such an order, if twelve months have expired since the date of the delivery of the bill or if judgment has been given in an action to recover the charges in question and an order made by virtue of paragraph (b) of this subsection may contain terms as to the costs of the taxation."*

10

Firstly, it is clear from the above section of the law that except where a direction providing for the giving of security is issued under section 16(3) of the Act and security is not given in accordance with the direction, the court shall on the application of a client made within the period of one month from the date on which a bill of charges was delivered to him, order that the bill shall be taxed and that no action to recover the charges shall be begun until the taxation is completed. 15

Secondly, the court may, if it thinks fit, but subject to the provisions of section 17(3) of the said Act, on any application made after the expiration of the said period of one month by the legal practitioner or (except as aforesaid) by the client, order the taxation of the bill or that until taxation is completed, no action to recover the charges mentioned in the bill shall be begun and any such action already begun shall be stayed. An appropriate application may therefore be made in any court of competent jurisdiction for the enlargement of time within which to apply for taxation of a bill of charges pursuant to the provisions of section 17(2) of the Act. 20 25

Thirdly, and most importantly, it must be noted pursuant to section 17(3) of the Act that no order shall be made under Section 17(2) of the Act in any case after the period of twelve months from the date on which the bill in question was paid, In the same vein, no order shall be made under the said section 17(1) of the Act except in a case where the court considers that there are "special reasons" for making such an order, if twelve months have expired since the date of the delivery of the bill or if judgment has been given in an action to recover the charges involved. 30 35

In the present case, the bill of charges as I have observed was served by the appellants on the respondents on the 18th April, 1983. The application

for taxation was not commenced by the respondent, a client, until the 27th September, 1985 a period of two years and five months from the date of the delivery of the bill. It seems to me crystal clear that the application is definitely caught by the provisions of section 17(3) of the Act as it was brought outside the limitation period prescribed thereunder. The trial court was in my view in  
 5 error by failing to advert its mind to the provisions of Sections 17(1) and 17(3) of the Act in respect of which it made no finding whatsoever inspite of the submission of the learned appellants' counsel on the point.

It is true that the trial court had jurisdiction to determine if there existed special reasons for making the order for taxation of the bill of charges  
 10 outside the period of twelve months prescribed by the Act from the date of delivery of the bill.

This issue, however, was not considered at all by the trial court and there lies where it slipped and fell into a serious error in law.

On the same question of whether the respondent's application is  
 15 caught by the limitation period prescribed by the Act, the Court of Appeal considered the issue but held that it was not so caught. It gave its reason for this decision as being that the bill of charges did not relate to a completed job but concerned a disputed bill in respect of an uncompleted assignment. With great respect, I must disagree with the reasoning and conclusion of the Court  
 20 of Appeal on this point. In my view, so long as the application for taxation by the client was made outside the period of twelve months from the delivery of the bill of charges without any enlargement of time having been obtained, the proceedings would be caught by the provisions of section 17(3) of the Legal Practitioners Act, 1990. It will make no difference that the bill of charges is in  
 25 respect of completed or uncompleted acts of a legal practitioner as section 17(3) of the Act does not appear to have imported any such distinction in its terms.

It is for this and the more elaborate reasons contained in the lead judgment of my learned brother, Ogwuegbu, J.S.C. that I too, hereby allow this  
 30 appeal. I abide by the consequential orders including the order as to costs therein made.