



Japhet C Chidzipha t/a J C Chidzipha & Co. Advocate v Kayaja (Miscellaneous Application E023 of 2021) [2022] KEHC 14459 (KLR) (28 October 2022) (Ruling)

Neutral citation: [2022] KEHC 14459 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS APPLICATION E023 OF 2021
JN ONYIEGO, J
OCTOBER 28, 2022**

BETWEEN

JAPHET C CHIDZIPHA T/A J C CHIDZIPHA & CO. ADVOCATE APPLICANT

AND

RODAH KAYAJA RESPONDENT

RULING

1. On October 27, 2021, Japhet C Chidzipha t/a J C Chidzipha & Company Advocates filed an advocate's client bill of costs against one Rodah Kayala seeking a sum of Ksh 207,200 inclusive of VAT being legal fees arising from instructions received from the respondent to represent her in Mombasa civil appeal suit No 20 of 2006 which case was finalized the year 2009.
2. During the pendency of the bill of costs for taxation, Rodah filed a notice of motion dated April 26, 2022 pursuant to section 48 of the *Advocate's Act*, section 4 of the *Limitation of Actions Act* and all enabling provisions of the law seeking that the bill of costs be struck out and the costs be borne by the respondent.
3. The application is based on grounds stated on the face it and further amplified by an affidavit sworn by Rodah Kayala on April 26, 2022. According to the applicant, she admits instructing the respondent to represent her in Taveta Civil Suit No 20/2006 as the defendant which suit was withdrawn and a fresh one being Civil No 9/2007 filed. That the later suit was struck out *vide* a ruling delivered on July 20, 2007. She averred that she had fully paid the respondents their full legal fees as per their demand hence no outstanding legal fees. That the bill of costs herein was filed 13 years after the suit was dismissed and therefore statutorily time barred. She claimed that under the *Limitation of Actions Act*, a claim based on a contract cannot be enforced after 13 years;
4. In response, the respondent filed what is referred to as grounds of opposition dated May 25, 2022 stating that;



- a. It is an abuse of the process of the court; illegal and only aimed at aiding the respondent to avoiding paying the advocate his rightful professional fees
 - b. There is no law under the [Advocates Act](#) which limits and or gives time limit where an advocate can claim his professional fees
 - c. Section 48 of the [Advocates Act](#) is not applicable since it deals with costs recovery procedure and does not stop an advocate from taxing his /her bill. In fact it talks of action for recovery of costs and does not place a limit of bringing a suit for recovery of such costs
 - d. The [Limitation of Actions Act](#) and particularly section 4 is not applicable where the [Advocates Act](#) which is the main law is silent on time limit and in any event it is not specific on advocate costs.
 - e. Even if the time to recover advocates fees was provided for, the time can only start running when the fees is demanded and the applicant has specifically pleaded as he has been asking for his fees and it is only in 2019 when the respondent informed him that she will not pay and in computing time, then the period should start running from 2019 as stated in paragraph 5 of the affidavit in support of the bill of costs.
 - f. The insistence by the respondent that in computing time if at all is necessary and required you should start counting from the time the ruling/judgment or final decision was made, is misleading, mischievous and not based on any law. If anything, any contract implied or written between an advocate and client for representation is entered at the point of instructions and not at the point of final decision and the advocate is always entitled to have his fees even if the matter takes decades.
 - g. The respondent has never paid the applicant any fees and in 2011 after instructing him to settle the matter out of court changed her mind and applied to act in person an action which was done in bad faith and calculated to deny the applicant his lawful fees.
 - h. This matter is now subject to appeal which is pending in the high court where there is also a bill pending which bill has not been served for reason of the respondent's tricks to refuse service and I have applied to have the bill served in a substituted manner and the application is still pending.
 - i. This application has been brought under the wrong provision of the law and cannot stand and as such fatally defective.
 - j. The bill can only be opposed in the process of taxing it and cannot be subject of striking out and if striking out has to be done, then it must be done in accordance with the law.
 - k. The applicant /advocate is entitled to his fees and particularly where the respondent has not shown any evidence of paying fees due to the applicant.
 - l. Application should be dismissed with costs
5. When the matter came up for directions, parties agreed to dispose of the same through written submissions.
 6. Mr Mwakireti counsel appearing for the applicant filed his submissions on July 5, 2022, thus emphasizing that the bill of costs is statutorily time barred hence should be struck out. That a claim for costs in respect of legal services rendered by an advocate to his client is a claim founded on contract which is enforceable within 6 years pursuant to section 4 (1) of the [Limitation of Actions Act](#)



7. To support the proposition that a claim based on an advocate client bill of costs cannot be filed after six years, counsel made reference to the case of *Abincha & Company Advocates v Trident Insurance Co Ltd (2013) eKLR* where the court held that a claim for an advocate's client bill of costs after six years from the time the work of rendering legal services lapsed was time barred. Based on this authority, counsel urged the court to strike out the bill of costs.
8. On their part, the applicant/respondent filed their submissions on July 26, 2022 through the firm of Oddiaga and Co Advocates. Basically, counsel reiterated the content contained in the grounds of opposition thus contending that the statutory *Limitation Of Actions Act* does not apply to a claim over recovery of legal fees.
9. According to the respondent, recovery of legal fees is governed by section 48 of the *Advocates Act* and not section 4 of the *Limitation of Actions Act* which has no connection with recovery of advocate's costs. That in any event, if there is any provision governing time limitation on an advocate's recovery of costs, then, time started running when the demand for costs was made. It was further contended that if there is any objection, the same should be raised during taxation of the bill of costs.
10. I have considered the application herein, response thereto and submissions by both counsel. The only issue which crystalizes for determination is whether the claim for payment of costs is time barred under the *Limitation of Actions Act*.
11. There is no dispute that the applicant was represented by the respondents (advocates) in Civil Suit Nos 20/2006 and 9/2007. There is no dispute also that the last time the respondents represented the applicant was the year 2007. It is also not in dispute that the respondents raised their bill of costs the year 2021 about 11 years down the line since the finalization of the subject case.
12. The question that begs for an answer is whether the claim for costs constitutes a contract as to enable section 4 of the *Limitation of Actions Act* to come into operation.
13. Indeed, there is no dispute that recovery of advocates' bill of costs is guided by section 48 (1) of the *Advocates Act*. The question is, what type of relationship is established between an advocate and a client instructing such advocate to represent him. Ordinarily, an advocate who is retained by a client does enter into a written or verbal contract to render legal services to his client. In the corporate world, for instance, an advocate is retained for a specific purpose of rendering legal services and therefore payment of legal fees is dictated by the nature of the case the advocate is retained for or contracted to handle.
14. It is not correct to state that there is no contract arising from a client retaining an advocate. The relationship is definitely that of a contract which then squarely fall under section 4 of the *Limitation of Actions Act*.
15. It cannot be said that advocates' claims against clients are unregulated and therefore indefinite. There is a legitimate expectation from a client that he will not be subjected to a claim over payment of legal fees 50 years from the time delivery of such legal services lapsed.
16. I do quite agree with the holding of Hatari J in *Abincha and Co advocates' case* above quoted that a claim for legal fees or a bill of costs is guided by the statutory limitation of time hence a claim for recovery of legal fees or costs after six years is time barred pursuant to section 4 of the *Limitation of actions Act*. As to when time starts running, it is at the time the last legal service is rendered after conclusion of the case and not when a demand notice for payment is made.



17. In the case of *Akide and Company Advocates v Kenindia Assurance Company limited (2021) eKLR*, the court had this to say;

“... I do find that the bills of costs are adversely affected by the *Limitation Of Actions Act* and the same are time barred. ...the upshot is that the bill of costs was filed after the expiry of six (6) years after the completion of the work and are time barred. Action for legal fees is one based on contract ...The contract can be implied if there is no written agreement on the legal fees payable”.

18. Based on the above jurisprudence, I have no doubt in my mind that the claim herein for taxation of the bill of costs amounts to a prayer for enforcement of a contractual obligation which is time barred. Six years having lapsed without any action for recovery of such costs being instituted. Accordingly, the bill of costs filed herein on October 27, 2021 is struck out with costs to the applicant.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 28TH DAY OF OCTOBER 2022.

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J N ONYIEGO

JUDGE

