



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. CIVIL APPLICATION NO. 17 OF 2016

AKIDE & CO. ADVOCATES.....ADVOCATE/APPLICANT

-VERSUS-

KENINDIA ASSURANCE & CO. LIMITED.....CLIENT/RESPONDENT

RULING

1. The advocate/applicant filed the Bill of Costs dated 10th April, 2015 which was then placed before Hon. F. Rashid the taxing officer. Upon consideration, the taxing officer moved to strike it out for being time barred vide her ruling of 9th November, 2016.
2. Being aggrieved, the applicant filed the Chamber Summons dated 16th November, 2016 seeking for *inter alia*, the setting aside of the ruling and for reinstatement of Bill of Costs.
3. This court heard and allowed the Summons thus reinstating the Bill of Costs. The parties are now before this court seeking for the determination of the pending issue of whether or not the Bill of Costs is time barred.
4. Pursuant to the directions given by this court on 27th May, 2019, the parties filed and exchanged written submissions in addressing the abovementioned issue. On its part, the applicant submits that since the substantive matter is yet to be concluded, its Bill of Costs cannot be deemed time barred. It was pointed out that the circumstances under which time begin to run have not set in.
5. The respondent opposed the applicant's position by submission contending that the relationship between the parties terminated sometime in the year 2004, hence the applicant ought to have lodged its Bill of Costs within six (6) years therefrom in accordance with Section 4(1) (a) of the Limitation of Actions Act. The respondent has urged this court to find that the Bill of Costs is statute barred.
6. I have carefully considered the rival submissions and the respective authorities cited. It is noted that neither of the parties have disputed the existence of an advocate-client relationship between them. It is further noted that the relationship between them is of a contractual nature. It therefore follows that **Section 4(1) (a)** of the **Limitation of Actions Act, Cap. 22** would apply. The said provision explicitly stipulates that the limitation period within which a party can institute an action in respect to a contract is not more than six (6) years from the date of the cause of action.
7. The circumstances in which time begins to run for the recovery of costs by an advocate were considered in the case of **Mercy Nduta Mwangi t/a Mwangi Kengara & Company Advocates v Invesco Assurance Company Limited [2016] eKLR** where the court expressed itself *inter alia* as follows:

“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.***

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...”

8. I have perused the Bill of Costs and observed that the last action taken in the matter prior to its filing was the court attendance on 14th April, 2004 for purposes of recording a consent. The contents of the consent are not described in the Bill of Costs though I noted the applicant's averments in its Chamber Summons that the aforesaid consent had not been adopted as an order of the court which goes to show that the matter is yet to be concluded.

9. It would appear no evidence has been brought forward to indicate that either of the circumstances envisaged hereinabove for time to begin running have been met; be it the entry of judgment in the matter or the termination of the advocate-client relationship between the parties or the conclusion of any particular work undertaken by the applicant on the respondent's behalf had been concluded.

10. In the end, I find that the Bill of Costs is not time barred. The preliminary objection is dismissed. Consequently, therefore the applicant is at liberty to set down the Bill of Costs for taxation afresh before any taxing officer other than Hon. F. Rashid.

Dated, signed and delivered at **NAIROBI** this 25th day of September, 2019.

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J. K. SERGON

JUDGE

In the presence of:

..... for the Advocate/Applicant

..... for the Client/Respondent