



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. CIVIL APPLICATION NO. 13 OF 2016

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

-VERSUS-

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

RULING

1. This ruling was precipitated by the filing of the applicant's Advocate-Client Bill of Costs dated 26th May, 2015 which the respondent has argued was time barred by virtue of the provisions of Section 4(1) (a) of the Limitation of Actions Act.
2. Thereafter, the applicant filed a Chamber Summons dated 1st November, 2016 seeking for *inter alia*, an order for the reinstatement of the aforesaid Bill of Costs after the same was struck out for being time barred by the taxing officer, Hon. F. Rashid on 31st October, 2016.
3. The Summons was heard inter parties before this court and subsequently, the prayer for reinstatement was allowed on the basis that the learned taxing officer had no jurisdiction to consider and determine the issue touching on limitation of time.
4. The parties are now before this court seeking for the determination of the pending issue of limitation; that is, whether or not the Bill of Costs is time barred.
5. When the parties appeared before this court on 28th February, 2019 they were directed to file and exchange written submissions on the issue. The record show that only the applicant complied with the order of filing submissions.
6. The applicant contends that the matter in which it was at all material times representing the respondent as it advocates is yet to be concluded.
7. It is also the applicant's submission that the circumstances which would trigger the running of time pursuant to the statute of limitations have not been met, hence the Bill of Costs cannot be deemed to be time barred.
8. I have considered the arguments set out hereinabove and the authorities supporting the applicant's submissions. It is not in dispute that the advocate-client relationship between the applicant and respondent was at all material times contractual in nature. It therefore follows that the applicable provision would be **Section 4(1) (a)** of the **Limitation of Actions Act, Cap. 22** which essentially prescribes that actions founded on contract ought to be brought within six (6) years from the date of the cause of action.
9. In the case of **Kenya Orient Insurance Limited v Oraro & Company Advocates [2014] eKLR** the court set out the instances under which an advocate could recover his or her costs from a client with reference to *Halsbury's Laws of England, 4th Edition, Volume 28 at paragraph 879 (page 452)* thus:

“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...

10. Having perused the record and the Bill of Costs, it is apparent that the last action taken in the matter prior to the lodging of the said Bill of Costs was the attendance of a mention in court on 15th November, 2002. No evidence has been brought forward to indicate either that judgment was entered in the matter or that the relationship between the parties herein had terminated or that any specific work done by the applicant on behalf of the respondent had been concluded for time to start running.

11. In view of the foregoing, I have no basis to find that the Bill of Costs is time barred. Consequently the preliminary objection is dismissed. The applicant is therefore at liberty to set down the Bill of Costs for taxation afresh before any taxing officer other than Hon. F. Rashid. Each party to bear its own costs.

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