

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC CIVIL APPLICATION NO. 543 OF 2015

AKIDE & CO. ADVOCATES.....APPLICANT

-V E R S U S -

KENINDIA ASSURANCE CO. LIMITED..... RESPONDENT

RULING

1) The firm of Akide & Co. Advocates, the applicant herein, took out the motion dated 23rd September 2016 in which it sought for the following orders:

1. THAT this honourable court be pleased to set aside in its entirety the order/ruling of the Taxing Master on 19th September 2016 and delivered on the same day.

2. THAT this honourable court be pleased to review the order of the Taxing Master made on 19th September 2016 disallowing the entire Bill of Costs herein.

3. THAT this honourable court be pleased to reinstate the applicant's Bill of Costs dated 2nd December 2015.

4. THAT costs of this application be provided for.

2) The summons is supported by the affidavit of Patricia Wangari Gikunju. When served, Kenindia Assurance Co. Ltd, the respondent herein, filed the replying affidavit of Don Otury to oppose the summons. When the summons came up for interpartes hearing learned counsels recorded a consent order to have the application disposed of by written submissions.

3) It is the submission of the applicant that the Taxing Officer disallowed the entire Bill of Costs under Section 4(1)(a) of the Limitation of Actions Act in excess of her powers under the Remuneration Order. The application submitted that the Taxing Officer has no jurisdiction to determine whether or not a Bill of costs is time-barred. It is also the submission of the applicant that the Taxing Officer erred when she failed to tax the Bill of Costs dated 2/12/2015.

4) The respondent urged this court to dismiss the summons for lacking in form, procedure and merit. The respondent pointed out that the ruling sought to be impugned dated 19.09.2016 is not annexed to the application for review therefore, the same is incompetent. It is also argued that the applicant cannot appeal and apply for review at the same time.

5) The main issue which was put to the attention of this court is whether or not the Taxing Officer has jurisdiction to hear and determine the question as to whether or not a Bill of Costs is time-barred. The respondent does not dispute the allegation that the Taxing Officer proceeded to dismiss the Bill of Costs on the basis that it was time-barred. The respondent has contended that the ruling giving rise to the dismissed order has not been presented to this court. I find the objection to be plausible, however the inescapable fact is that the decision complained of was made therefore there is no harm if the summons is determined in its absence. The question is whether the Taxing Officer had jurisdiction to entertain the issue touching on limitation of actions. With respect, I agree with the submissions of the applicant that the Taxing Officer had no jurisdiction to determine the issue touching on limitation of time to file an action for determination and recovery of costs. Consequently, the decision delivered on 19.9.2016 is set aside. The Bill of Costs dated 2/1/2015 is reinstated. Parties to list the matter for hearing before a judge to determine the question whether or not the Bill of Costs is time-barred. Costs of the summons shall await the outcome of the Bill of Costs.

Dated, Signed and Delivered in open court this 9th day of March, 2018.

J. K. SERGON

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent