

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 3753 OF 1986

GEORGE OGOLAPLAINTIFF

VERSUS

THE ATTORNEY GENERAL.....DEFENDANT

RULING

Judgment was entered in favour of plaintiff in this matter with costs and interest. The defendant paid the principal amount while the costs remain unpaid. When the bill of costs was filed, the taxing master dismissed it for being time barred. The plaintiff then filed this application to set aside the decision of the taxing master and remit the bill of costs for taxation by a different taxing master.

The application is opposed by the defendant. It is the defendant's case that the plaintiff slept on his rights for nine years and therefore is to blame for the delay in taxing the bill which is now said to be time barred. The Limitation of Actions Act Cap 22 Laws of Kenya has been cited and in particular Sections 4 (1) by the defendant, and Section 4 (4) by the plaintiff.

The first matter for me to decide is whether or not the taxing master had jurisdiction to dismiss the bill of costs for being time barred. The defendant says it was correct for the taxing master to dismiss the bill of costs while the plaintiff submits otherwise. It is important to make a difference between advocate/client costs and party/party costs.

In the instant case the costs were awarded in the judgment and the bill of costs was by the plaintiff against the defendant, not his advocate against him. Under Section 4 (4) of the Limitation of Actions Act an action may not be brought upon a judgment after the expiration of twelve years. In the instant case, nine years had gone by. Considering that costs were part of that judgment, and being party and party costs, time was still running because the plaintiff had twelve years in his favour. Had it been advocate/client bill of costs, it would have been caught by the provisions of Sections 4 (1) (a) of the Limitation of Actions Act which provide that any claim or action for an advocate's costs begins to run from the date of completion of the work done or lawful end of the retainer.

It is also clear from the provisions of Section 13 A of the Advocates Act Cap 16 Laws of Kenya that the Taxing Master has no jurisdiction to declare the bill of costs time barred. In that regard I agree with Seron J in Misc. Application No. 667 of 2013 **Mbugua & Mbugua Advocates Vs. Kenindia Assurance Limited where** he stated as follows,

“6) The Advocates (Remuneration) Order, Rule 13A provides for the powers of a Taxing officer in part as follow:

“For purposes of any proceeding before him, the taxing officer shall have power and authority to summon and examine witnesses, administer oaths to direct the production of books, papers and documents and to direct and adopt all such other proceedings as may be necessary for the determination of any matter in dispute before him.”

7) This rule lays out the duties of a taxing officer. Anything exceeding the listed duties under Rule 13 A is not allowed and any acts done beyond Rule 13 A are carried out of jurisdiction. The duty of the taxing officer was to tax the bill before her and not to delve into matters that she had no authority to preside over.”

The taxing master should not have decided on his own motion that the bill of costs was time barred. This was a clear misdirection of the law. I have come to the conclusion that the bill of costs was not time barred and that the order of the taxing master is hereby set aside. The bill of costs shall be remitted to a different taxing master for taxation. The costs shall be in the cause.

Dated, signed and delivered at Nairobi this 23rd day of May, 2018.

A. MBOGHOLI MSAGHA

JUDGE