



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MISC APPLICATION 667 OF 2013**

**MBUGUA & MBUGUA ADVOCATES.....APPLICANTS**

**VERSUS**

**KENINDIA ASSURANCE CO. LTD.....RESPONDENT**

**RULING**

The applicants herein were the advocates for the respondent. They filed a bill of costs based on work done in favour of the respondent. The taxing master disallowed the bill of costs because it was statute barred. The applicants were aggrieved by that order and moved the court to set aside the said order. Sergon J found that the taxing master should not have addressed the issue of whether or not the bill of costs was time barred because that was beyond her jurisdiction. That is the matter that is now before this court. Both parties have filed submissions and cited some authorities which I have considered.

I am only required to decide whether or not the bill of costs is time barred. The relation between the advocate and his client is contractual. It is provided under Section 4 (1) A of the Limitation of Actions Act, Cap 22 Laws of Kenya that time begins to run against an advocate from the completion of the work he is detailed to perform on behalf of his client or when the retainer is terminated.

In the instant case, there is no doubt that there was some relationship between the advocate and client. It is not clear however when the work assigned to the advocate by the client was determined or came to an end. It is also not clear when the retainer was equally terminated or withdrawn. If it is the respondent's case that work was terminated or retainer withdrawn, the law demands that he who alleges has the duty to prove the allegation. See Section 107 and 108 of the Evidence Act, Cap 80 Laws of Kenya.

The advocates/ applicant have submitted that if the respondent alleges termination of their assignment, then it has the duty prove. In the absence of any such proof then the applicants are within time to file and have the bill of costs taxed. The balance of probability in this case is in favour of the advocates/ applicant and my assessment of the averment is that the respondent is bent on postponing an obvious eventuality.

I have no hesitation in concluding that the bill of costs filed by the applicant is not time barred in the absence of any proof by the respondent who is alleging so. The High Court does not tax bills of costs and therefore the said bill of costs shall be remitted to a different taxing master with competent jurisdiction to tax the same. The costs shall be in the cause.

***Dated, signed and delivered at Nairobi this 23<sup>rd</sup> day of May, 2018.***

**A. MBOGHOLI MSAGHA**

**JUDGE**