



**REPUBLIC OF KENYA**

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

**CIVIL DIVISION**

**HIGH COURT CIVIL MISC. APPL. NO. 116 OF 2016**

**MEREKA & CO ADVOCATES.....APPLICANT**

**VERSUS**

**INVERSCO ASSURANCE CO. LTD.....RESPONDENT**

**RULING**

1. The application dated 27<sup>th</sup> April, 2017 seeks orders that:

**“1. That the decision of the Taxing Officer delivered on 30<sup>th</sup> March, 2017 as far as the same relates to taxation of the entire Applicant’s Bill of Costs herein be and is hereby set aside.**

**2. That the Honourable Court be pleased to refer back the matter to the Taxing Officer for re-taxation of the entire Bill of Costs herein and with proper directions thereof.**

**3. That in the alternative to prayer 2 above, the Honourable Court be pleased to re-tax the said Bill of Costs herein.**

**4. That the costs of this application be in cause.”**

2. The application is based on the following grounds:

**“a) That the Taxing officer erred in law and in principle by entering a ruling that the Bill of Costs is statute barred being filed more than 6 years after the advocate ceased from acting for the Client.**

**b) That the Taxing Officer erred in law and principle by failing to appreciate the fact that notwithstanding the lapse of time since 2007, this application is not time barred for the following reasons:**

**1. That in a meeting held on 16<sup>th</sup> November, 2012, the client agreed that the total amount of outstanding fees of Ksh.4,312,824/= due to the Advocate would be paid in installments.**

**2. That on 20<sup>th</sup> November, 2012 we wrote to the client and made reference to the meeting of 16<sup>th</sup> November, 2012. We requested the client to make payment of the first deposit of Ksh.700,000/= as per the attached copy of our letter dated 20<sup>th</sup> November, 2012.**

**3. That the client responded on 22<sup>nd</sup> November, 2012 confirming the minutes of the meeting of 16<sup>th</sup> November, 2012 and requested for more time to settle the fee notes as per a copy of their letter dated 22<sup>nd</sup> November, 2012.**

**4. That in a tele-conversation between our Miss Dorothy Jemator and their Miss Lynette, the client informed us that the initial deposit cheque was being processed as per attached Internal Memo dated 29<sup>th</sup> November 2012.**

**5. That we did not receive the said initial deposit as agreed and on 2<sup>nd</sup> December, 2012 we wrote to the client to remind them to send the cheque for the deposit which was not delivered to us on agreed date and as per the Attached copy of our letter.**

6. That the client did not make good their promise to pay and on 22<sup>nd</sup> October, 2014, we wrote to the client to advise them that we shall proceed to recover our fees in court as they had reneged the agreement to pay our fees as per a copy of our letter attached herewith.

7. That it is clear from the foregoing, it is the client who delayed in making payment of the taxed costs and the Advocate had been very vigilant in pursuing his costs and the client is estopped from pleading issue of limitation.

8. That the Advocates for the parties have, in past taxations, agreed not to contest on the issue of limitation for the reasons stated above.”

3. The application was opposed as per the following grounds of opposition dated 3<sup>rd</sup> July, 2017:

1. That the Bill of Costs dated 3<sup>rd</sup> December, 2015 is statute barred by virtue of Section 4(1) of the Limitation of Actions Act.

2. That the Applicant did not seek leave of the court before filing the Bill of Costs.

3. That the Statutory limitation of time cannot be cured through a reference.

4. That fees arising from this Bill of costs fees agreed on in the meeting held on 16<sup>th</sup> November, 2012.

5. That correspondences annexed to the application do not refer to Nairobi CMCC No.9810 of 2006.

6. That the application is thus incompetent, vexatious and should be struck out.

7. The Application is an abuse of the due process of the court.

4. The application was disposed of by way of written submission. I have considered the said submissions.

5. On 30<sup>th</sup> March, 2017 the Taxing Officer dismissed the Advocate/client Bill of Costs herein dated 3<sup>rd</sup> December, 2015 and filed in court on 17<sup>th</sup> March, 2015 as being statute barred. The said bill of costs reflects that instructions were received on 10<sup>th</sup> October, 2006 and ended on 16<sup>th</sup> January, 2007 when the last step was taken in the case. The Bill of costs was thus filed about eight years from the date the matter came to the end.

6. However, from the material place before this court, it is clear from the letter dated 20<sup>th</sup> November, 2012 from the Applicant to the Respondent pursuant to a meeting held on 16<sup>th</sup> November, 2012 between the parties there was an acknowledgment of the debt by the Respondent and the payment of the fees was to be by monthly installments. This position is confirmed by the letter from the Respondent dated 22<sup>nd</sup> November, 2012. I am therefore persuaded by the Applicant's submissions that time started running from the said date. Consequently, I hold that the Bill of costs which was filed about three years later was not time barred. (See for example *Mereka & Co Advocate v Invesco Assurance Company Ltd Nbi Misc Appl No. 317/2015*)

7. The Taxing Officer had no jurisdiction to determine whether the Bill of Costs was time barred. The matter could only be determined by a judge. As stated in the *Mbugua & Mbugua Advocates v Kenindia Assurance Co. Ltd [2016] eKLR*:

**“Before taxation could have been undertaken by the taxing officer, the issues of the bill of costs being statute barred having been raised by the parties ought to have been referred to the High Court by the taxing officer for determination. In this case, the High Court is the court with jurisdiction to hear and determine such issues.”**

8. With the foregoing, I allow the application as prayed. The Bill of Costs is hereby referred to the Taxing Officer for taxation.

Dated, signed and delivered in Nairobi this 29<sup>th</sup> day of Nov., 2018

**B. THURANIRA JADEN**

JUDGE