



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL MISC. APPL. NO. 308 OF 2015

MEREKA & CO ADVOCATES.....APPLICANT

VERSUS

INVESCO ASSURANCE CO. LTD.....RESPONDENT

RULING

1. The application dated 14th September, 2017 seeks orders that:

“1. That the decision of the Taxing Officer delivered on 18th August 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 16th 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 20th November, 2012 we wrote to the client and made reference to the meeting of 16th 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 20th November, 2012.

3. That the client responded on 22nd November, 2012 confirming the minutes of the meeting of 16th November, 2012 and requested for more time to settle the fee notes as per a copy of their letter dated 22nd 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 29th November 2012.

5. That we did not receive the said initial deposit as agreed and on 2nd 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 22nd 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. There was no response filed to the application. The application proceeded *ex parte* by way of written submissions which I have considered.

4. The ruling of the Taxing Officer dated 18th August, 2017 held that the Advocate/Client Bill of Costs herein was statute barred. The Bill of Costs was filed in court on 21st July, 2015. The said Bill of Costs reflects that instructions to defend the suit No SPMCC Nbi 1441/07 were received on 3rd May 2007 and ended on 30th May, 2007 when the last step was taken.

5. However, from the material placed before this court, it is clear from the letter dated 20th November, 2012 from the Applicant to the Respondent pursuant to a meeting held on 16th November, 2012 between the parties, the Respondent acknowledged the debt and the payment of the fees was to be made by monthly installments. This position is confirmed by the letter from the Respondent dated 22nd 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*)

6. 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.”

7. 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 28th day of Nov., 2018

B. THURANIRA JADEN

JUDGE