



**REPUBLIC OF KENYA**

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

**MISCELLANEOUS CIVIL APPLICATION NO. 35 OF 2016**

**MISCELLANEOUS CIVIL APPLICATION NO. 44 OF 2016**

**MISCELLANEOUS CIVIL APPLICATION NO. 46 OF 2016**

**MISCELLANEOUS CIVIL APPLICATION NO. 47 OF 2016**

**AKIDE & COMPANY ADVOCATES.....APPLICANTS**

**-VERSUS-**

**KENINDIA ASSURANCE COMPANY LIMITED.....RESPONDENT**

**CONSOLIDATED RULING**

1. **Akide and Company Advocates** (Applicants) filed Bills of Costs in the above matters against **Kenindia Assurance Limited** (Respondents) for taxation. The Bills of Costs were filed between 1<sup>st</sup> and 14<sup>th</sup> September 2016. It would seem that on 14/11/2016 the parties, were directed by the Taxing Master to file submissions subsequent thereto. Ruling dates were set in all the matters.
2. However, upon receipt and perusal of submissions the Taxing Master referred the matters to the High Court, the issue of limitation of time having been raised therein. The parties subsequently attended the Judge who directed that further submissions be filed. The issues and submissions raised by the respective parties are similar in all the four matters hence this consolidated ruling.
3. The question whether the taxing master has jurisdiction to dismiss a Bill of Cost, as raised in the Respondent's submissions is for purposes of this case academic, in my view. This is because the taxing master having read the parties' submissions correctly referred the matters to the Judge to deal with the question of limitation. She did not dismiss any Bill of Costs as stated in the Applicants' submissions. Thus the only issue before this court is whether the Applicants Bills of Costs are time barred by operation of the Limitation of Actions Act.
4. The admitted background is that the Applicants were instructed by the Respondent to defend four cases filed against the Respondents' insured. In brief and succinct submissions on the question, the Applicants submitted that time ought to be reckoned from the time of judgment in the said suits or completion of work. They rely on **Waweru J's decision in HCC Miscellaneous Application 527 of 2011 Abincha & Co. Advocates -Vs- Trident Insurance Company Limited [2011] eKLR**. The Applicants argued that no judgment was entered in some of the matters in respect of which the Bills were filed as parties settled out of Court – See **ELRC Miscellaneous Application 1518 of 2013 Edward Acholla -Vs- Sogea Satom Kenya Branch & 2 Others**.

5. Further that the Applicants' instructions were not withdrawn. Nor had the solicitors ceased to act. Thus, the retainer continued to subsist. Reliance was placed in this regard on **HCC Miscellaneous Application 318 of 2013 Githiga Mwangi & Co. Advocates -Vs- Jane Mumbi Kiano and Halsbury's Laws of England 4<sup>th</sup> Edition Volume 28 paragraph 879.**

6. For their part, the Respondents citing the above paragraph of **Halsbury's Laws of England** and **Abincha** (supra) argue that time begins to run upon completion of the work assigned to a solicitor, entry of judgment or termination of retainer.

7. Regarding **Miscellaneous Application No. 46 of 2016**, the Respondent argued that Judgment in the initial suit was entered on 25/8/2005 and since no further work was assigned, the judgment date was the completion date. Thus under Section 4 (1) a) of the Limitation of Actions Act, the Applicants cannot recover costs for professional services from the Respondent, more than years having elapsed.

8. Similarly the Respondent argues that the completion dates in the suit giving rise to **Miscellaneous Application 47 of 2016** was 21/8/2003 when judgment was delivered, while in the initial suit in respect of **Miscellaneous Application 44 of 2016** the date of completion was 1/2/2007 when judgment was delivered. Regarding the initial suit giving rise to **Miscellaneous Application 35 of 2016**, the judgment was delivered on 28/7/2006.

9. I have considered the material canvassed before me. There is no dispute that there was a contract for the provision of professional services between the parties herein and that the Applicants undertook the defence of the initial suits on behalf of the client/Respondent. Thus the actions by the advocate by way of Bills of Costs to recover costs is subject to the Limitation of Actions Act.

10. I have perused the material in the respective files and I note that indeed judgments were rendered in all the suits giving rise to the Bills of Costs as follows:

**a) Miscellaneous Application No. 46 of 2016:**

**Judgment in CMCC 523 of 2004 delivered on 25/8/2005**

**b) Miscellaneous Application No. 44 of 2016:**

**Judgment in SPMCC 264 of 2006 delivered on 31/01/2007**

**c) Miscellaneous Application No. 47 of 2016:**

**Consent Judgment recorded in SPMCC 1068 of 2003 on 28/7/2004**

**d) Miscellaneous Application No. 35 of 2016:**

**Judgment in SPMCC 645 of 2002 delivered on 28/3/2006**

11. There is no evidence that any appeals were preferred in any of the initial suits or that the advocate did any further assignment on behalf of the Respondents. I agree entirely with the application of **paragraph 879 of Volume 28 of Halsbury's Laws of England** by **Waweru and Ngaah JJ** in the cases of **Abincha** and **Gathiga Mwangi**, respectively.

12. The said **paragraph 879** at **page 452 of Volume 28 of Halsbury's Laws of England** states:

**"879. Solicitors costs in relation to continuous work by a solicitor, such as the bringing and prosecuting or defending an action:**

**1. If a solicitor sues for his costs in an action, the statute of limitation only begins to run from the date of termination of the action or of the lawful ending of the retainer of solicitor;**

**2. If there is an appeal from the judgment in the action, time does not begin to run against the solicitor, if he continues to act as such, until the appeal is decided;**

**3. If a judgment has been given and there is no appeal, time runs from the judgment and subsequent items of costs incidental to the business of the action will not take the earlier items out of the statute.**

**In respect of miscellaneous work done by a solicitor, time under statutory limitation begins to run from the completion of the whole of each piece of work.**

**A solicitor cannot sue a client for costs until the expiration of one month after delivery of a signed bill, but nevertheless time runs against a solicitor from the completion of the work and not from the delivery of the bill. If only some of the items included in the bill are statute barred, the solicitor may recover in respect of the balance.” (emphasis added)**

13. Regarding the present case, there can be no dispute that the limitation period began to run upon judgment being rendered in the primary suits. Even where there was a consent as alluded to by the Applicants, the consent was adopted as a judgment of the court. That applies only to **SPMCC 1068 of 2003** where a judgment by consent was recorded on 28/7/2004.

14. It seems to me that the Applicants primarily based their submissions on the portion of **paragraph 879 Halsbury’s Laws of England** which clearly relates to miscellaneous work by a solicitor; rather than the portion regarding continuous work such as bringing, prosecuting and defending an action on a client’s instructions. All the primary suits from which the instant Bills of Costs arose fall within the first part of sub-paragraph (3) of the said paragraph.

15. Therefore, based on the dates of delivery of judgments in the primary suits, the Bill of costs claimed in the four Miscellaneous proceedings herein are statute barred under Section 4 (1) a) of the Limitation of Actions Act. The Bills of Costs are accordingly struck out with costs to the Respondent.

**Delivered and signed at Naivasha this 24<sup>th</sup> day of July, 2017.**

In the presence of:-

N/A for the Applicants

N/A for the Respondents

Court Assistant – Barasa

**C. MEOLI**

**JUDGE**