



**REPUBLIC OF KENYA**

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

**MISCELLANEOUS CIVIL APPLICATION NO. 1037 OF 2013**

**KENINDIA ASSURANCE CO. LTD.....APPLICANT**

**VERSUS**

**AKIDE & CO. ADVOCATES.....RESPONDENT**

**RULING**

1. The Applicant has filed a notice of motion dated 24<sup>th</sup> November, 2013 seeking an order of consolidation of this miscellaneous application with Nairobi Miscellaneous Applications in the schedule annexed to the supporting affidavit of Regina Kitheka and that the Respondent's bill of costs be struck out. The application is premised on the grounds set out on the face of the application and the supporting affidavit of Regina Kitheka who is the Applicant's Chief Legal Manager. It is contended that the bills of costs were filed after the expiry of six (6) years contrary to the law on limitation of actions and secondly that the bill of costs were filed yet the advocate had raised final fee notes which had been settled and that additional payments would occasion the Applicant substantial loss.
2. Kenneth Wabwire Akide swore a replying affidavit in opposition to this application. He opposed the application on grounds that; the Applicant has not shown sufficient cause why stay of taxation should be issued; the court cannot issue an order of consolidation for all the taxation matters in the Applicant's schedule because the cause of action in each matter is different; the Applicant has not made this application timeously and only seeks to delay the payment of the Respondent's bill of costs for work done; the Applicant has failed to disclose that some of the matters listed in the schedule are still pending before court and that the Respondent is still on record; the Applicant has not proved to the court that the matters in the schedule are settled, in any event the Applicant needs to produce court judgments in each case or orders made in respect of the matters indicating settlement and that the prayer sought by the Applicant cannot be subject of an omnibus order. The Respondent further contested that Applicant ought to have made applications in every matter if indeed they are time barred since each case should be determined on merit. That the Applicant is economical with the truth since the fee notes referred to were partially settled and that is what prompted the Respondent to seek redress through taxation and that thereby the doctrine of estoppel is not applicable.
3. The application was canvassed by written submissions. It was the Applicant's submissions that the relationship between an advocate and a client being guided by contract law, any claim for fees between the two is also founded under contract. Reference was made to Section 48 (1) (a) of the Advocates Act which stipulates that no action for recovery of any costs due to an advocate or his firm shall be brought until the expiry of one month after a bill of such costs, which may be in summarized form, signed by the advocate or a partner in his firm, has been delivered or sent by registered post to the client. It was argued that after the expiry of a month, the Respondent must

have drawn up his final legal fee note and sent it to the Applicant for payment and that if the Applicant failed to settle the fees, then the Respondent should have invoked the proviso of Section 48 thus commenced action for recovery of his costs. The Applicant cited **Abincha & Co. Advocates v. Trident Insurance Co. Ltd (2013)eKLR** where Waweru J., expressed the importance of observing time in discerning taxation matters. The Judge in the said case cited **Halsbury's Laws of England, 4<sup>th</sup> Edition, Volume 28 par. 879, pg. 452** which states:-

*"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 the 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 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 some only of items included in the bill are statute barred, the solicitor may recover in respect of the balance."*

4. It was further argued that the Respondent has not tried to extend the limitation period as provided under Part III of the Limitation of Actions Act and that the Respondent has not relied on any maxim of equity to invoke any equitable reliefs it deemed relevant to salvage its claim. On the issue of consolidation, it was argued that Order 3 Rule 5 of the Civil Procedure Rules provides for consolidation of matters which relate to the same parties over the same issues of law.
5. The Respondent contested that consolidation cannot be done in this case because matters did not arise from the same cause of action. The Respondent on this point cited **Joseph Njoroge Kangarua v. Harrison Wagacha Munyui (2013) eKLR** where it was held that in order to consolidate matters under Order 11 rule 1 of the Civil Procedure Rules, the matters must have similar question of law or fact and in **Mount Kenya Sundries Limited and another v. Kenya Ports Authority and another (2015)eKLR** where it was held that for a court to issue an order of consolidation, it must have sight of the matters to be consolidated in order to make a determination whether they have similar questions of law or fact.
6. I have considered the dispositions of the parties herein. It is noteworthy that the Applicant has not established by way of evidence that there are any fee notes which were fully settled in favour of the Respondent. Secondly, while determining professional fees, the subject matters of the suit have to be considered separately. Again the Applicant has failed to establish that the subject matter or facts in the bills are the same. In the circumstances, I find no merit in this application. It is hereby dismissed with costs to the Respondent.

**Dated, Signed and Delivered in open court this 31<sup>st</sup> day of August, 2015.**

**J. K. SERGON**

**JUDGE**

In the presence of:

.....for the Applicant.

..... for the Respondent.