



**Kago & another (Both t/a Shamata Enterprises) v Wangai t/a Kiama
Wangai & Co Advocates (Environment and Land Miscellaneous Case
E085 of 2022) [2025] KEELC 6028 (KLR) (17 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6028 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS CASE E085 OF 2022
CG MBOGO, J
SEPTEMBER 17, 2025**

BETWEEN

**WILSON MWANGI KAGO 1ST CLIENT
SAMWEL NDEGWA KIRIRO 2ND CLIENT
BOTH T/A SHAMATA ENTERPRISES**

AND

**PROF KIAMA WANGAI T/A KIAMA WANGAI & CO
ADVOCATES ADVOCATE**

RULING

1. Before this court for determination is the notice of motion dated 20th November, 2024 and the notice of preliminary objection of even date both filed by the advocate/respondent. The notice of motion dated 20th November, 2024 is expressed to be brought under Sections 1A, 1B and 3A of the [Civil Procedure Act](#), Sections 45 (1)(a), (2), (2A), 6 of the [Advocates Act](#) and Section 4 (1)(a) of the [Limitation of Actions Act](#) and Order 51 of the [Civil Procedure Rules](#) seeking the following orders:-
 - a. That this honourable court be pleased to find that the taxing master lacks jurisdiction to tax the Advocate-Client bill of costs dated 31st May, 2022 by dint of an agreement between the Advocate and Client lease agreement dated 30th October, 2015 and strike out and/or dismiss the advocate-client bill of costs dated 31st May, 2022.
 - b. That this honourable court be pleased to find that the advocate-client bill of costs dated 31st May, 2022 is statute barred by dint of Section 4 (1)(a) of the [Limitation of Actions Act](#) instructions having been given and acted upon on 30th October, 2015 and strike out and/or dismiss the advocate-client bill of costs dated 31st May, 2022.



- c. That the costs of this application be awarded to the advocate/applicant.
2. The application is premised on the grounds on its face. It is further supported by the affidavit of the advocate/respondent sworn on even date. The advocate/respondent deposed that he was instructed by the clients/ applicants to prepare a lease agreement for Nairobi Block 105/321 and Plot No. P5577 which he prepared on 30th October, 2015. Further, that the clients/applicants refused to pay him the agreed fees of Kshs.1,500,000/- which necessitated the filing of CMCC No. E914 of 2021. Further, that as per the transfer of the interest of the lease to Lexo Energy Kenya Limited, the client/ applicant was in arrears of the advocate fees in the sum of Kshs.1,800,000/- as at June, 2019 and as such, the taxing master lacks jurisdiction to proceed with the Advocate-Client bill of costs.
 3. The advocate/ respondent deposed that the demand for the payment of Kshs. 1,500,000/- was made to the client/applicant on 29th October, 2020 and the same has never been challenged. Further, that the said bill of costs is statute barred by Section 4 (1)(a) of the Limitation of Actions Act for having been acted upon on 30th October, 2015.
 4. The advocate/respondent also filed the notice of preliminary objection dated 20th November, 2024 seeking that the advocate-client bill of costs dated 31st May, 2022 be struck out or dismissed with costs for being statute barred by dint of Section 4 (1)(a) of the Limitations of Actions Act.
 5. In response to the application, the clients/applicants filed their replying affidavit sworn on 18th February, 2025 by Wilson Mwangi Kago. The clients/applicants deposed that they leased the property from Annah Wangari Kinyanjui and it was agreed that the owner would pay the advocate/respondent the fees for the entire conveyance, and not just for the drawing of the lease agreement. The clients/ applicants deposed that the advocate/respondent did not execute the instructions as given, and declined to perfect the lease agreement. Further, that failure to do so prompted the lessor to get another advocate to proceed with the transaction. According to them, they paid the advocate/respondent a sum of Kshs. 900,000/- but he has failed to disclose to this court the same.
 6. This court directed that the application and the preliminary objection be canvassed by way of written submissions. The advocate/respondent filed his written submissions dated 25th April, 2025 with respect to the notice of preliminary objection. The advocate/respondent submitted that the bill of costs dated 31st May, 2022 was filed six years and seven months after the cause of action arose. He submitted that the same is statute barred by virtue of Section 4 (1) and (3) of the Limitation of Actions Act. While relying on the case of Abincha & Co. Advocates v Trident Insurance Co. Ltd [2013] eKLR, the advocate/respondent submitted that the cause of action is contractual and ought to be brought within a period of six years. Further reliance was placed in the case of Bosire Onyang v Royal Media Services [2015] eKLR.
 7. I have carefully analyzed and considered the application, the preliminary objection, the replying affidavit and the written submissions filed by the advocate/respondent. In my view, the issue for determination is whether the advocate-client bill of costs is statute barred.
 8. Law, JA in Mukisa Biscuits Manufacturing Company Limited -vs- West End Distributors (1969) EA 696 stated as follows: -

“So far as I am aware, a preliminary objection consists of a point of law which has been pleaded or which raises by clear implication out of pleadings, and which if argued as a preliminary point, will dispose of the suit. Examples are an objection to jurisdiction of the court, a plea



of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the matter to arbitration...”

9. For a preliminary objection to succeed, the same must consist of a pure point of law, with the facts not disputed by the opposing party. Also, a preliminary objection should possess the ability to dispose of the issue that is before court without going to trial and lastly, the same ought to stem from and not outside of the pleadings. Upon evaluation of the preliminary objection, I am satisfied that it raises a pure point of law.
10. It is not in dispute that the clients/applicants instructed the advocate/respondent to prepare a lease agreement for lease of land known as Nairobi/Block 105/321 and Embakasi Ranching Company Limited Plot No. P5577. From the documents relied upon by the advocate/respondent, the legal fees payable was agreed between the parties and while contention has been raised on whether the advocate/respondent complied with instructions, the fact is that the fees was agreed between the parties. In response to the application, the clients/applicants seem not to challenge the fact that the cause of action arose in the year 2015. As I have noted, there is no agreement on record between the clients/applicants and the advocate/respondent on instructions of the services save for the agreement for lease of land dated 30th October, 2015.
11. As a result, the clients/applicants filed the advocate-client bill of costs dated 31st May, 2022 seeking to tax costs arising from services rendered on 30th October, 2015. There is no other evidence indicating the other tasks carried out by the advocate/ respondent after this period which leads me to the conclusion that the last task was carried out on 30th October, 2015. Section 4 (1)(a) of the [Limitation of Actions Act](#) provides that an action founded on contract may not be brought after the end of six years from the date on which the cause of action accrued.
12. It is clear from the above that the advocate-client bill of costs dated 31st May, 2022 is statute barred by dint of Section 4 (1)(a) of the [Limitation of Actions Act](#). From the above, I find merit in the notice of motion dated 20th November, 2024 and the notice of preliminary objection dated 20th November, 2024 and I proceed to grant the following orders: -
 - i. The advocate-client bill of costs dated 31st May, 2022 is statute barred by dint of Section 4 (1) (a) of the [Limitation of Actions Act](#), and it is hereby struck out.
 - ii. Each party to bear their own costs.Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 17TH DAY OF SEPTEMBER, 2025.

HON. MBOGO C. G.

JUDGE

In the presence of:

Mr. Benson Agunga - Court assistant

No appearance for the Applicants/Clients

No appearance for the Respondent/Advocate

