



**John Magiya and Company v Punjani (Family Miscellaneous Application  
E015 of 2024) [2025] KEHC 9229 (KLR) (20 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9229 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
FAMILY MISCELLANEOUS APPLICATION E015 OF 2024**

**G MUTAI, J  
JUNE 20, 2025**

**BETWEEN**

**JOHN MAGIYA AND COMPANY ..... APPLICANT**

**AND**

**TAURAT PUNJANI ..... RESPONDENT**

**RULING**

1. Before the Court is a Notice of Motion dated 13<sup>th</sup> March 2025 vide which the Respondent/Applicant seeks inter alia the stay of taxation pending the hearing and determination of the preliminary objection she filed before the Taxing Master and for the striking out of the instant matter.
2. The Respondent/Applicant avers in her supporting affidavit sworn on 13<sup>th</sup> March 2025 that what the advocate, the Applicant/Respondent herein, was claiming were costs that were statute barred, that the respondent's law firm lacked standing to file the bill for taxation as it had not complied with the Rule 12 of the Advocates (Practice) (Rules), 1966, that the advocate was negligent and the preliminary objection ought to have been referred to a judge for determination.
3. She averred that unless the taxation were stayed, she would suffer substantial and irreparable prejudice by being subjected to taxation proceedings that may be null and void.
4. The respondent did not file a response in the eFiling/CTS platform. There is no physical copy of the replying affidavit in the court file. However, as the issues are legal, I allowed the Applicant/Respondent to make oral submissions when the matter came up for hearing on 23rd April 2025.
5. The matter was heard through oral submissions on 23<sup>rd</sup> April 2025.
6. Ms Punjani submitted that the Taxing Master could determine all questions, excluding those of jurisdiction. She referred me to the case of Kenya Orient Insurance Limited v Oraro & Company Advocates [2014] KEHC 6235 (KLR), in support of her submissions. She averred that Mr. Magiya



was negligent in his professional services, failed to communicate with her, and essentially abandoned the case. She submitted that the bill of costs was from the firm of John Magiya & Co. Advocates, while the firm in existence is John Magiya & Co. Advocates. On account of the latter, she averred that a non-existent entity filed the bill of costs

7. Mr. Magiya opposed the applications. Although he claimed to have filed a replying affidavit dated 14<sup>th</sup> April 2025, it is not available on the eFiling/CTS platform. He averred that the Respondent/Applicant herein had not disclosed what provisions of the law he was relying on. He urged that the lapses in the application could not be cured by sections 1A and 1B of the *Civil Procedure Act*.
8. Mr. Magiya denied that he had been negligent. He stated that he assisted the Respondent/Applicant in obtaining the necessary orders. The orders were set aside as no certified copy of the marriage was produced. He submitted that the taxation was filed within time. He also accused the Respondent/Applicant of stealing his law firm's file from his office.
9. Regarding the business entity. Mr. Magiya stated that he traded as John Magiya & Co. Advocates and that he was an advocate of the High Court of Kenya.
10. I have considered the parties' documents and the oral submissions they made. In my view, the main issue before me is jurisdiction and whether the bill of costs was statute-barred. Can the Taxing Master consider issues of limitation when taxing an advocate's bill of costs? Is the bill of costs statute barred? What remedies should issue herein?
11. The advocate has contested the competence of the application on the ground that the provisions of law under which they are premised haven't been given. In my view, this objection is a technical objection that shouldn't prevent the Respondent/Applicant from having her day in Court. I am persuaded that the lapse is curable under sections 1A and 1B of the *Civil Procedure Act* and Article 159(2)(d) of *the Constitution* of Kenya. As I often say, procedure is the handmaiden of substance, not its mistress. I have not seen any prejudice that the Applicant/Respondent has suffered for want of publication of the said provisions.
12. Regarding the legal standing of John Magiya & Co. Advocates to file the bill of costs. I am not persuaded by the arguments presented by Ms Taurat Punjani that this objection is merited. I take judicial notice of the fact that the Registrar of the Business Registration Services, when registering trading names, does not permit the addition of a professional appellations. Section 60(1)(o) of the *Evidence Act* requires this Court to take judicial notice of "all matters of general or local notoriety". How the Business Registration Services, a body established under an Act of Parliament, conducts its business is one that this Court will take judicial notice of. In my view, the Respondent/Applicant's objection is misplaced and must fail.
13. What of professional negligence? The facts presented to the Court are insufficient for this Court to determine whether Mr. Magiya was negligent or not. Negligence is a serious issue that the Respondent/Applicant would be best advised to pursue elsewhere. I have perused Rule 7 of the Advocates' Remuneration Order. The rule in question provides for interest that may be charged. I am unable to see now that the said provision would disentitle the advocate to his costs.
14. I agree that the issue of limitation is one that the High Court should determine. There are a number of decisions on this point. These decisions are clear that this Court, rather than the Taxing Master,



should determine the matter. In *Kenya Orient Insurance Limited v Oraro & Company Advocates* [2014] KEHC 6235 (KLR), Gikonyo J stated as follows:-

“(20) The ratio decidendi in and the thinking by Waweru J, in the above case is quite subtle and I am persuaded to adopt it. Consequently, I hold that a taxing officer in such matter as a taxing officer does not have jurisdiction to determine the issue of limitation of the bill of costs...”

15. Since the matter has been referred to me, and as the question of limitation is subject to my determination, I will now turn to it.
16. Whether or not the bill is statute-barred depends on when exactly the relationship ended. The law is that the statute of limitations begins to run from the date the judgment was delivered unless there is evidence that the advocate was retained for post-judgment work.
17. When faced with a similar case, in *Abincha & Co Advocates v Trident Insurance Co Ltd* [2013] eKLR, Waweru, J had the following to say at paragraph 28:-

“28. As already seen, any claim or action for an advocate’s costs is subject to the statute of limitation. As already seen also, time begins to run from the date of completion of the work or lawful cessation of the retainer. Time does not begin to run from the date of delivery of the bill! Section 48(1) of the *Advocates Act* therefore cannot offer any defence against limitation.”

18. The above position was reiterated by Ngaah, J in *Gathiga Mwangi & Co. Advocates v Jane Mumbi Kiano* [2016] KEHC 4079 (KLR), where it was held that:-

“Thus far there is no dispute; the point of departure between the parties appears to me to be the point at which time started running. According to the applicant, time started running when he ceased acting on 3<sup>rd</sup> October, 2013 while the respondent’s position is that the clock started ticking in February, 2007 when the court delivered its judgment in the matter in which the applicant’s services were provided.

The answer as to which of the opposing arguments is the correct interpretation of the law appears to be in Halsbury’s *Laws of England*, 4<sup>th</sup> Edition, Volume 28 at paragraph 879 which was cited with approval by Hatari, J. in the *Abincha & Co. Advocates versus Trident Insurance Co Ltd* case (supra); it is stated in that paragraph as follows:-

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 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 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 run 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.

This citation must have been making reference to the Solicitor’s Act, 1974 which applies in England but, in the absence of any local statutory provision on this issue, it remains the closest indication of when time begins to run against the filing of an advocate/client bill of costs. It is instructive that time started running from the date the judgment was delivered assuming that counsel was then still on record and not from the date counsel ceased acting, after the delivery of the judgment.”

19. In this case, the arbitral award was adopted on 21<sup>st</sup> June 2017. In my view, this is the date the time began running. I have not seen any evidence of work supposedly done by the advocate after this date, as would entitle him to fees. In the circumstances, I agree with the Respondent/ Applicant that the Bill of Costs is statute-barred.
20. That being the position, I find and hold that the Bill of Costs dated 4<sup>th</sup> May 2024 is statute-barred. The same is struck out. Since the advocate has lost the fees he would have been entitled to, and as the Respondent/Applicant is a pro se litigant, I order that each party bears his or her own costs.
21. It is so ordered.

**DATED AND SIGNED AT MOMBASA THIS 20<sup>TH</sup> DAY OF JUNE 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

In the presence of:-

Mr Magiya, for the Applicant/Respondent;

Ms Taurat Punjani (pro se litigant); and

Arthur – Court Assistant.

