



**Kibuchi & Company Advocates v Kenindia Assurance Company Limited (Civil Miscellaneous Application 710 of 2018) [2023] KEHC 4072 (KLR) (Civ) (3 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 4072 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL MISCELLANEOUS APPLICATION 710 OF 2018**

**AN ONGERI, J**

**MAY 3, 2023**

**BETWEEN**

**KIBUCHI & COMPANY ADVOCATES ..... APPLICANT**

**AND**

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

**RULING**

1. The application coming for consideration in this ruling is the one dated 15/7/2022 seeking review of this court's order dated 1/7/2022 and further that the applicant's Bill of Costs dated December 13, 2018 be reinstated for taxation.
2. The application is based on the grounds on the face of it as follows; that the respondent retained the legal service of the advocate on or about December 2005 to defend its insured in an accident preferred against it in Nairobi CMCC No 1042 of 2007, James Mwenda Mageu v Chandaria industries Ltd and which was concluded in October 2008.
3. The applicant/advocate immediately thereafter proceeded to issue fee notes including the fee note dated December 2, 2009 and which fee was not settled. The applicant filed a bill of costs and in response the respondent filed a Notice of Preliminary Objection dated November 1, 2021 alleging that the Bill of Costs was statute barred and the Claim for legal fees was therefore time barred. The court thereafter in a ruling delivered on July 1, 2022 upheld the Notice of Preliminary Objection.
4. The application is supported by the affidavit of John Muriuki Kibuchi in which it is deponed as follows; the applicants and the respondent had an advocate-client relationship in respect of legal services rendered by the applicant to the respondent on instruction. On or about April 2007, the respondent/client instructed the applicant/advocate to defend a claim in Nairobi CMCC No 1042 of



2007 James Mwenda Mageu v Chandaria Industries Limited (the Main Suit) and agreed on the legal fees chargeable as per the Advocates Remuneration Order.

5. The applicant/advocate strenuously and zealously defended the said main suit to its conclusion on September 29, 2009. That during the subsistence of the main suit the applicant issued interim and final fees to the respondent for their settlement which was not made despite several follow ups. The final reminder having elicited no positive outcomes, the applicant filed its bill of costs dated December 13, 2018 at the High Court claiming legal fees the sum of Kshs 48,844.
6. The respondent in opposition of the bill of costs filed a notice of preliminary objection dated 1/11/2021 alleging that the said bill of costs was statute barred for the reason that it was lodged later than 6 years since the conclusion of the main suit in September 2009. The court delivered a ruling on 1/7/2022 upholding the notice of preliminary objection whilst dismissing the bill of costs as being incompetent for being filed outside the statutory limitation period.
7. That the ruling was obtained through a deliberate concealment of facts that the applicant had sent a final reminder on the legal fees to the respondent on September 16, 2016. That the statutory period for enforcement of the applicant's rights under the contract for provision of legal services would tentatively lapse on or about 15/9/2020.
8. Opposing the application, the respondent filed grounds of opposition as follows;
  - a. That the application is misplaced, incompetent and an abuse of court process as the applicant has not fulfilled the requirements warranting a review of the orders issued herein on 1/7/2022 by either stating the new and important matter/evidence which has since come to its knowledge, the apparent mistake/error on the face of the record which it seeks the court to consider and thereby rectify or indeed any sufficient reason for grant of the orders being sought
  - b. That the application is misplaced, incompetent and tantamount to an abuse of the court process as the orders sought therein, may only be granted on appeal and not by way of review.
  - c. That the application is frivolous and vexatious as it seeks that this honorable court address the issues arising in its own ruling and thereby sit on appeal therefrom.
  - d. That the applicant failed, ignored and/or otherwise neglected to give reasons warranting review of the orders issued herein on 1/7/2022 the application lacks bona fides and ought to be dismissed with costs to the respondent
9. The parties filed written submissions which I have duly considered. The applicant submitted that the application is merited and in line with Order 45 (1) (b) of the Civil Procedure Rules
10. The sole issue for determination is whether the order dated 1/7/2022 should be reviewed.
11. I find that the reason for striking out the bill of costs is that the same was statute time barred.
12. The governing provision for review of orders is Order 45 of the civil procedure Rules which provides for grounds of review as follows;
  - “ 1. Any person considering himself aggrieved—
    - (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
    - (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or



evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review”

13. The Applicant is seeking the review on the ground that the Respondent had been sent the last reminder on September 16, 2016 and therefore the ruling dismissing his bill of costs was obtained by concealment of facts.
14. The parties did not file any submissions when the preliminary objection was raised and I find that the court would not have dismissed the bill of costs if the said evidence had been tabled.
15. The application dated 15/7/2022 has merit and I accordingly allow it and accordingly reinstate the bill of costs for taxation.
16. Since both parties did not comply with the order of the court in filing of submissions, each party to bear its own costs of the Application.

**Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 3<sup>rd</sup> day of May, 2023.**

**A. N. ONGERI**

**JUDGE**

In the presence of:

.....for the Applicant/Advocate

.....for the Respondent/Client

