



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL MISC. APP. NO. 546 OF 2015

AKIDE & CO. ADVOCATES..... PLAINTIFF

VERSUS

KENINDIA ASSURANCE COMPANY LTD..... DEFENDANT

RULING

1) The subject matter of this ruling, is the notice of preliminary objection dated 21st April 2021 raised by Kenindia Assurance Co. Ltd, the defendant herein.

2) The defendant is of the submission that the advocate-client Bill of Costs filed by the firm of Akide & Co. Advocates the plaintiff herein is time barred. The plaintiff opposed the preliminary objection arguing that the relationship of the parties did not end at the date of delivery of judgment.

3) The plaintiff alluded that time would begin to run from the date of execution of the decree. The plaintiff also pointed out that the notice of preliminary objection does not qualify to be regarded as a preliminary objection because evidence will be required to be tendered to establish certain facts.

4) Having considered the rival submissions, it is apparent that certain facts are not disputed. **First**, is that the plaintiff was instructed to act for the defendant in **Nairobi R.M.C.C.C no. 4257 of 2003 Duncan Mwangangi =vs= Laxmanbhai Construction Ltd.**

5) **Secondly**, that judgment in Nairobi R.M.C.C.C. no. 4257 of 2003 was delivered on 29th July 2004.

6) **Thirdly**, that the instant Bill of Costs dated 15th May 2015 was filed on 4th December 2015.

7) **Fourth**, that no appeal has been preferred against the aforesaid judgment.

8) The question which this court is required to determine is whether the instant Bill of Costs is statute barred. There is no doubt that the relationship between the plaintiff and the defendant is contractual. The cause of action expires at the lapse of six years from the date when it arose.

9) In **Halsbury's Laws of England 4th Edition, vol. 28 para. 879 P. 452** it is stated inter alia:

“In relation to continuous work by a solicitor, such as the bringing and prosecuting or defending an action

(i) 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.....”

10) In this matter, judgment was delivered on 29th July 2004. Time therefore begun to run as from the date of judgment. By the time the Bill of Costs was filed eleven (11) years had passed.

11) Under Section 4(1) of the Limitation of Actions Act, an action founded on contract may not be brought after the end of six years from the date when the cause of action accrued.

12) It is therefore clear that the defendant's notice of preliminary objection has merit. The plaintiffs' Bill of Costs is therefore statute barred.

13) The Preliminary Objection is upheld. Consequently, the plaintiff's Bill of Costs is hereby ordered struck out for being incompetent. In the circumstances of this case, a fair order on costs is to order which I hereby do that each party shall bear their own costs.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 17TH DAY OF SEPTEMBER, 2021.

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant