



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC. APPLICATION NO. 696 OF 2017

MBUGUA & MBUGUA CO. ADVOCATES.....ADVOCATE/APPLICANT

-VERSUS-

KENINDIA ASSURANCE & CO. LIMITED.....CLIENT/RESPONDENT

RULING

1. This ruling relates to the client's/respondent's Notice of Motion dated 10th July, 2019 supported by the grounds set out on the face of the motion and the facts deponed to in the affidavit of *Winnie A. Paul*. The orders being sought therein are as follows:

i) THAT the advocate/client bill of costs filed herein be struck out with costs to the client.

ii) THAT the costs of the application be provided for.

2. The Motion stands opposed by way of the replying affidavit sworn by *Rebo Dianarose Wambui* on behalf of the advocate/applicant, to which the respondent rejoined with a supplementary affidavit equally sworn by *Winnie A. Paul*.

3. On 6th May, 2019 when the parties attended the interpartes hearing, of the motion, this court directed the parties to file written submissions.

4. I have considered the grounds stated on the face of the Motion as well as the facts deponed in the affidavits filed in support and against the application. I have also taken into consideration the rival written submissions.

5. The brief background of this matter is that the respondent instructed the applicant to institute a civil suit on behalf of its insured seeking damages resulting from a road traffic accident. The same was filed on 25th June, 1997 under *Civil Suit No. 4782 of 1997 (Caltex Oils (K) Ltd v Josephat Githae*.

6. Thereafter, the applicant filed an Advocate-Client Bill of Costs on 16th November, 2017 seeking costs totaling the sum of Kshs.113,680.92/= in respect to of the abovementioned case. The respondent is now seeking to have the said Bill of Costs struck out.

7. The respondent has urged this court to find that the Bill of Costs is statute barred. The respondent stated that on 13th June, 2005 the applicant took out a notice to show cause as to why execution should not proceed against the judgment debtor in *Civil Suit No. 4782 of 1997*, hence the time for filing the Bill of Costs began to run from the date when the said judgment debtor appeared in court, which was on the 5th of August, 2005.

8. The respondent further contended that the advocate-client relationship terminated in 2007 upon the filing of the Bill of Costs, arguing that the applicant at no time raised a fee note for services rendered.

9. In response, the applicant submitted that there is nothing to indicate that the aforementioned suit was determined more than 10 years ago so as to cause the Bill of Costs to be time barred pursuant to Section 4(1) (a) of the Limitation of Actions Act.

10. It is the applicant's submission that time started to run from 13th November, 2017 when its application to cease acting for the respondent was allowed.

11. It is not in dispute that the respondent engaged the services of the applicant or that the said applicant filed the above suit at its behest.

12. The respondent in particular portrayed the position that the lower court suit was heard and determined, but did not avail a copy of the judgment for this court's perusal, thereby making it impossible to ascertain if and when judgment was entered. What is before this court is a copy of the notice to show cause issued on 13th June, 2005 annexed to the supplementary affidavit of the applicant.

13. It is also noted that the applicant's application to cease acting in this suit is dated 14th September, 2017. However, no order or ruling was availed to confirm whether or not the same was allowed.

14. There is no doubt that the relationship between an advocate and a client is contractual in nature and would thus fall under the purview of Section 4(1) (a) of the *Limitation of Actions Act* which grants a six (6)-year window period for bringing a cause of action. In the case of *Abincha & Co Advocates v Trident Insurance Co Ltd [2013] eKLR* the court held *inter alia* as follows:

“An advocate's claim for costs would be based on the contract for professional services between him and his client. It would be a claim founded on contract. An action to recover such costs would be subject to the limitation period set out in section 4(1) (a) of the Limitation of Actions Act.”

15. The court in the above matter went further to set out the three (3) instances under which time would begin to run from the date an advocate sues for his costs:

a) From the date of termination of action or of the lawful ending of the retainer of the solicitor; or

b) 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; or

c) 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 statute.

16. It is not clear from the material presented to this court as to when relevant suit was concluded, there is no way of telling when or whether the relevant suit was concluded. It is also not possible to determine when, if ever, the applicant terminated its services with the respondent. I am therefore unable to ascertain when the statutory timelines began to run..

17. Consequently, I find no merit in the Motion. The same is dismissed with costs abiding the outcome of the Bill of Costs.

Dated, signed and delivered at NAIROBI this 12th day of July, 2019.

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J.K. SERGON

JUDGE

In the presence of:

..... for the Advocate/Applicant

.....for the Client/Respondent