



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL MISC. APPL. NO. 17 OF 2016

AKIDE & COMPANY ADVOCATES.....APPLICANT

- V E R S U S -

KENINDIA ASSURANCE CO. LTD.....RESPONDENT

RULING

1) The subject matter of this ruling is the summons dated 10th November 2016 in which the firm of Akide & Co. Advocates, the applicant herein, is seeking for the following orders:

1. THAT this honourable court be pleased to set aside in its entirety the order/ruling of the taxing master on 9th November 2016 and delivered on the same day.

2. THAT this honourable court pleased to review the order of the taxing Master made 9th November 2016 disallowing the entire bill of costs herein.

3. THAT this honourable court be pleased to reinstate the applicant's Bill of Costs dated 10th April 2015.

4. THAT costs of this application be provided.

2) The summons is supported by the affidavit of Patriciah Wangeci Gikunju. Kenindia Assurance Co. Ltd, the respondent herein, filed the replying affidavit of Don Otury to oppose the application. When the summons came up for interpartes hearing, learned counsels recorded a consent order to have the application disposed of by written submission. At the time of writing this ruling, the applicant was the only party which had filed its submissions.

3) I have considered the grounds set out on the face of the summons and the facts deponed in the affidavits filed in support and against the summons. I have further considered the submissions of the applicant. It is the submission of the applicant that the Taxing Officer erred when she disallowed the entire Bill of Costs under Section 4(1) (a) of the Limitation of Actions Act yet she had no jurisdiction to do so. The applicant further argued that the Taxing Officer failed to appreciate that the consent judgement has not been adopted as the decision of the court and therefore the matter is still pending and active before court.

4) The respondent vehemently opposed the summons arguing that the applicant did not follow the procedure stipulated by the law governing appeals and applications for review. The respondent did not address this court on the question as to whether or not the Taxing Officer had jurisdiction to determine the issue touching on limitation of actions.

5) Having considered the material and arguments presented before this court in support and against the summons, I think the main issue which commends itself for determination is the question of jurisdiction by Taxing Officers to entertain questions on whether or not a Bill of Costs is time-barred. It is not in dispute that the

applicant's Bill of Costs dated 10th April 2015 was heard and struck out by Hon. F. Rashid, the Taxing Officer on 9th November 2016 on the basis that the same was time-barred. In fact the learned Taxing Officer expressly stated that the last action in the parent suit was on 14.4.2004 which was about 12 years ago and proceeded to strike out the Bill of Costs and relied on the decision of Justice H. P. G. Waweru in **Abincha & Co. Advocates =vs= Trident Insurance Co. Ltd.** The duties of a Taxing Officer are clearly outlined under rule 13A of the Advocates (Remuneration) Order and do not include the power to determine the question as to whether or not a Bill of Costs is statute barred. In this case, the Taxing Officer proceeded to determine such an issue. With respect, I agree with the applicant's argument that the issue should have been referred to a judge to determine, before taxation could proceed to hearing.

The applicant has invited this court to determine the question as to whether or not its relationship with the respondent is continuous work by the applicant.

6) With respect, I decline to determine the issue at this stage because that is an issue which can be determined by the judge who will hear the question on jurisdiction.

7) In the end, I find the summons to be meritorious. Consequently, the order striking out the Bill of Costs made on 9th November 2016 is set aside. The Bill of Costs dated 10.4.2015 is reinstated. The issue on limitation of actions to be referred to a judge for determination before the Bill of Costs can be taxed. Costs of the Chamber Summons to await the outcome of the Bill of Costs.

Dated, Signed and Delivered in open court this 6th day of July, 2018.

J. K. SERGON

JUDGE

In the presence of:

.....for the Applicant

.....for the Respondent