



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL MISC. APPL. NO. 13 OF 2016**

**AKIDE & COMPANY ADVOCATES.....APPLICANT**

**- V E R S U S -**

**KENINDIA ASSURANCE CO. LTD.....RESPONDENT**

**RULING**

1. On 31.10.2016, Hon. F. Rashid, the learned Taxing Officer delivered a ruling in which she struck out the applicant's Bill of Costs dated 26.5.2015 on the basis that the same was time-barred pursuant to the provisions of Section 4(1) (a) of the Limitation of Actions Act.

2. Being dissatisfied with the aforesaid decision, the applicant filed the Chamber Summons dated 1<sup>st</sup> November 2016 whereof it sought 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 31<sup>st</sup> October 2016 and delivered on the same day.**

**2. THAT this honourable court be pleased to review the order of the Taxing Master made 31<sup>st</sup> October 2016 disallowing the entire bill of costs herein.**

**3. THAT this honourable court be pleased to reinstate the Applicant's Bill of Costs dated 26<sup>th</sup> May 2015.**

**4. THAT costs of this application be provided for.**

3. The summons is supported by the affidavit of Patricia Wangari Gikunju. When served, Kenindia Assurance Co. Ltd, the respondent herein, filed the replying affidavit of Don Otury to oppose the summons. When the summons came up for interpartes hearing. Learned counsels appearing in the matter recorded a consent order to have the application disposed of by written submissions.

4. I have considered the rival written submissions plus the material placed before this court in support and against the summons. The background of this summons is straightforward. The applicant appears to have been retained by the respondent to appear for it in defending Nairobi R.M.C.C. no. 834 of 2001, Peter Muriithi Kibutu =vs= Sunflag Textile and Knitwear mills Ltd. The respondent failed to settle the applicant's fees prompting the applicant to file the advocate-client Bill of Costs dated 26.5.2015 whereof the applicant sought to be paid a sum of ksh.54,363/= as fees. I have already stated that the aforesaid Bill of Costs was heard and ordered struck out by Hon. F. Rashid because the same was time barred.

5. The main issue which commends itself to be determined is the question as whether or not the learned Taxing Officer had jurisdiction to entertain the issue touching on the limitation of time. It is the submission of the applicant that the Taxing Officer did not have jurisdiction to entertain the issue under Rule 13A of the Advocates (Remuneration) Order. The respondent is of contrary view that the Taxing Officer had jurisdiction to hear and determine all the issues raised in the Bill of Costs. The respondent invited this court to determine the issue in case it finds the Taxing Officer to have erred.

6. I have carefully considered the provisions of Rule 13A of the Advocates Remuneration Order and it is clear that the Taxing Officer was not given jurisdiction to entertain an application seeking to determine whether or not the Bill of Costs was filed out of time. With respect, I agree with the applicant that the leaner Taxing Officer did not have jurisdiction to hear and determine the question as to whether or not the same was time-barred. In my humble view, that is a matter which can only be determined by a judge. This court was invited to determine the issue in case it agrees with the applicant's argument to set aside the decision striking out the Bill of Costs.

7. With respect, I decline to accede to the request because I am of the opinion that is an issue which should be determined after the Bill of Costs has been reinstated.

8. In the end, I find the summons to be meritorious. Consequently, the order striking out the Bill of Costs dated 26.5.2016 is set aside. The aforesaid Bill of Costs is reinstated. The same to be placed before a judge to first determine the question of limitation of actions before the Bill of Costs can be determined. Costs of the summons to await the outcome of the Bill of costs.

**Dated, Signed and Delivered in open court this 6<sup>th</sup> day of July, 2018.**

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Applicant

..... for the Respondent