



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL & ADMIRALTY DIVISION**  
**MILIMANI LAW COURTS**  
**MISC. CAUSE NO. 701 OF 2012**  
**IN THE MATTER OF ADVOCATES ACT CAP 16(LAWS OF KENYA)**  
**AND**  
**IN THE MATTER OF A REFERENCE UNDER RULE 11 OF THE ADVOCATES**  
**(REMUNERATION) ORDER**  
**BETWEEN**  
**KENYA ORIENT INSURANCE LIMITED .....CLIENT/APPLICANT**  
**VERSUS**  
**ORARO & COMPANY ADVOCATES ....ADVOCATES/RESPONDENTS**  
**RULING**

1. This Court is asked to determine whether the Bill of Costs dated 20<sup>th</sup> November 2012 presented by the Advocates for taxation is time barred.

2. The stage was set for the arguments in this respect by the Directions made by Gikonyo J. on 24<sup>th</sup> March 2014 when he stated thus:-

*“Accordingly, to enable the Court to resolve the issue of limitation of this action, effectually and completely, I will ask the parties to appear before me on a convenient date agreed or appointed by the Court, to address the Court on the question of whether the bill is time-barred. The manner in which the evidence or information should be tendered will be agreed or as directed by the Court. It is so ordered”.*

3. Both sides filed Affidavits and Submissions on the question of Limitation.

4. It is common ground that the Relationship herein between the Advocates and the Client was contractual in nature.

5. It has not been factual displaced that the Bill of Costs relate to Instructions given to the Advocates on 18<sup>th</sup> May 1987. The Instructions were to defend a suit that was later consolidated with another matter.

Judgment in the Consolidated Proceedings was delivered on 14<sup>th</sup> November, 2003. It would then seem that the Advocates last communicated to the Client on 18<sup>th</sup> April, 2005.

6. The Argument by the Client is that the Limitation of Action Act through Section 4(i)(a) prescribes a six (6) year period within which causes of action founded on Contracts can be brought. The Client further contend that, for purposes of Limitation, time started to run on 14<sup>th</sup> November 2003 when Judgement was delivered.

7. The position of the Advocates is that time runs from the completion of work or termination of Retainer and they maintain that there are still the Advocates on record. And in the Oral arguments before Court, Mr. Chacha Odera seemed to further suggest that time does not run until the Advocate sends a Bill under Section 48 of The Advocates Act.

8. On another front it was the submission of the Advocates that there was an acknowledgement of the Claim which revived what may have otherwise been a statute barred action. For this, Section 23(3) of the Limitation of Actions Act was cited, it provides:-

***“Where a right of action has accrued to recover a debt or other liquidated pecuniary claim, or a claim to movable property of a deceased person, and the person liable or accountable therefore acknowledges the claim or makes any payment in respect of it, the right accrues on and not before the date of the acknowledgement or the last payment:***

***Provided that a payment of a part of the rent or interest due at any time does not extend the period for claiming the remainder then due, but a payment of interest is treated as a payment in respect of the principal debt.***

The Advocates saw that acknowledgement at page 2 of the submissions filed by the Clients on 18<sup>th</sup> June 2013. Those were submissions made before the Taxing Master.

9. It cannot be controversial that the relationship between the Advocates and the Client was contractual in nature. Again there can be no dispute that the Advocates cannot bring a claim for fees against the Client after six years from the time to bring the Claim last accrued. What is critical for purposes of determining this dispute is the date with the clock started to tick ie. when time started running. On this I am persuaded that the approach taken by Waweru J. in **Abincha & Company Advocates vs. Trident Insurance Co. Ltd** [2013] eKLR is the correct one.

10. In that decision the good Judge considered the following passage from Harsbury’s Laws of England 4<sup>th</sup> Edition Volume 28 at paragraph 879:-

**“1. If a solicitor sues for this cost in an auction, the statute of limitation only begins to run from the date of termination of the action or of the lawful ending of the retainer of the solicitor;**

**2. 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;**

**3. if judgement has been given and there is no appeal, time runs from the judgement, and subsequent items of costs incidental to the business of the action will not take the earlier items out of the statute.**

**In respect of miscellaneous work done by a solicitor, time under statutory limitation begins to run from the completion of the whole of each piece of work.**

**A solicitor cannot sue a client for costs until the expiration of one month after delivery of a signed bill, but nevertheless time runs against a solicitor from the completion of the work and**

**not from the delivery of the bill. If some only of items included in the bill are statute-barred, the solicitor may recover in respect of the balance”.**

The Judge then held:-

**“28. As already seen, any Claim or Action for an Advocates Costs is subject to the Statute of Limitation. As already seen also, time begins to run from the date of completion of the work or lawful cessation of the Retainer. Time does not begin to run from the date of delivery of the Bill. Section 48(1) of the Advocates Act therefore cannot offer any defence against Limitation”.**

11. Adding his voice of support to this position, Ngaah J. in GATHIGA MWANGI & CO. ADVOCATE vs. JANE MUMBI KIANO [2016] eKLR had this to say,

**“This citation must have been making reference to the Solicitors Act, 1974 which applies in England Court, in the absence of any Local Statutory Provision on this issue, it remains the closest indication of when time begins to run against the filing of an Advocate/Client Bill of Costs. It is instructive that time started running from the date the judgement was delivered assuming that Counsel was then still on record and not from the date Counsel ceased acting after the delivery of the Judgement”.**

12. In the matter before me, there is no evidence that the Advocates were retained to carry out any post Judgement works and I must accept the clients position that time started to run from 14<sup>th</sup> November 2003 when judgement was delivered.

13. And as found by Waweru J. the provisions of Section 48 of the Advocates Act cannot aid the Advocates. Those provisions which are on Action for Recovery of Costs by an Advocate provides:-

**(1) Subject to this Act, no suit shall be brought for the recovery of any costs due to an advocate or his firm until the expiry of one month after a bill for such costs, which may be in summarized form, signed by the advocate or a partner in his firm, has been delivered or sent by registered post to the client, unless there is reasonable cause to be verified by affidavit filed with the plaint, for believing that the party chargeable therewith is about to quit Kenya or abscond from the local limits of the Court’s jurisdiction, in which event action may be commenced before expiry of the period of one month.**

**(2) Subject to subsection (1), a suit may be brought for the recovery of costs due to an advocate in any court of competent jurisdiction.**

**(3) Notwithstanding any other provisions of this Act, a bill of costs between an advocate and a client may be taxed notwithstanding that no suit for recovery of costs has been filed”.**

To accept, as argued by the Advocates, that for purposes of Limitation, time only starts to run from the date of the presentation of the Bill of Costs is to accept a utterly absurd position that actions for recovery of costs by Advocates can never be time barred because all they have to do is to present a Bill of Costs however late.

14. There was yet one other argument by the Advocates which this Court must consider. It was stated that the Clients acknowledged its indebtedness in its submissions of 18<sup>th</sup> June 2013 in answer to the Bill of Costs. However this argument is an attempt to read those submissions in piecemeal. As a prelude to the arguments made in those submissions, the Clients make it clear that it opposed the Bill on two grounds;-

**(a) As been excessive.**

**(b) As been statute barred.**

These were arguments made in alternatives and there could have been no acknowledgment of the debt.

15. This Court finds that the Bill of Costs dated 20<sup>th</sup> November 2012 is time barred and the same is struck out. As the Advocates have lost fees they would otherwise deserve, I make no order on costs.

**Dated, Signed and Delivered in Court at Nairobi this 10<sup>th</sup> day of February ,2017.**

**F. TUIYOTT**

**JUDGE**

**PRESENT;**

Barasa for Advocates

N/A for Client

Alex - Court clerk