



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

MISC CIVIL APPLICATION NO. 42 OF 2015

MBUGUA & MBUGUA ADVOCATES.....APPLICANT

VERSUS

KENINDIA ASSURANCE COMPANY.....RESPONDENT

RULING

The applicant herein is a firm of advocates who rendered services to their client the respondent herein. From the record, those services were determined in the year 2002. Apparently, the respondent and the applicant had not settled on the fees payable and on 21st January, 2015 the applicant filed a bill of costs for taxation.

Before the bill of costs was taxed, the respondent raised objection to the said bill for reasons that it was time barred under the Limitation of Actions Act. The Deputy Registrar decided to place the matter before the High court for determination of that issue. Both parties agreed to file written submissions which they have done.

It is submitted on behalf of the respondent that instructions by a client to counsel are in a form of a contract and any action founded thereon cannot be brought after the expiration of six years from the date on which the cause of action arose.

Further the bill of costs herein is based on the contract which existed between the parties in a matter that was concluded in year 2002, but the bill was filed in the year 2015 which is clearly outside the six years permitted for such a cause of action and is therefore time barred by virtue of Section 4 (1) (a) of the Limitation of Actions Act.

Counsel cited the case of **Kenya Orient Insurance Limited Vs Oraro & Company Advocates (2014) EKLR Milimani Misceneous Application No. 701 of 2012 and Abincha & Company Advocates Vs Trident Insurance Company Limited (2013)eKLR** to support their position.

On the other hand, the applicant submitted that, a bill of costs is not a claim, demand or a suit in the normal process of litigation but an assessment of the advocate's bill or charges for services rendered to a client. Whereas an action, a claim or suit commences with the filing of a claim which leads to a judgment following a hearing, a bill of costs is filed after such a judgment.

After the taxation of the bill of costs, if no settlement is made, counsel then applies for a judgment and it is then that such a judgment may constitute an action as referred to under section 4 (1) of the Limitation of Actions Act. In such a case a cause of action comes into being after taxation and issuance of a

certificate of costs.

Section 4 (1) (a) of the Limitation of Actions Act provides as follows,

“4(1) The following actions may not be brought after the end of six years from the date on which the cause of action accrued –

(a) actions founded on contract.”

There is no dispute that the case giving rise to the contested bill of costs ended in 2002. There is also no dispute that the bill of costs was filed in the year 2015 which is a period of 13 years after the conclusion of the case. In the case of **Abincha, Waweru J cited Halsbury’s Laws of England, 4th Edition Vol 28 paragraph 879** which states as follows,

“Solicitors Costs. In relation to continuous work by a solicitor such as bringing and prosecuting or defending an action;

1. If a solicitor sues for his costs in an action, the statute of limitation only begins to run from the date of termination of 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 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 the statute.

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

A solicitor cannot sue a client for costs until the expiration of one month after the 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.”

Gikonyo J in the case of **Kenya Orient Insurance Limited** agreed with Waweru J, and found that the advocates bill of costs was time barred.

A look at the bill of costs filed by the applicant shows that instructions were first received in January, 1996. No instruction fees were paid in that regard. The matter ended in June 2002 when an application for execution of the decree was filed. There is no explanation as to why the bill of costs was never filed soon thereafter if the respondent did not pay the applicant’s fees.

The cited cases were determined by courts of concurrent jurisdiction and are not binding on this court. However, they are persuasive in light of the attendant circumstances in this matter. Instructions by a client to counsel are in a form of a contract to render services upon agreed fees or to be agreed. Such a contract is therefore regulated by time and as provided, in the event the matter is concluded time begins to run therefrom.

From 2002 to 2015 no services were rendered by the applicant to the respondent. The applicant was supposed to demand payment for services rendered within six years of the determination of the case to gain protection from the Limitation of Actions Act. That they did not do so cannot be blamed on anyone except themselves. I find that no action lies against the respondent, the bill of costs filed is time barred and therefore struck out.

I am unable to award costs to the respondent considering the circumstances of this matter, and in view of

the fact that there is no denial that services were rendered as claimed by the applicant. Each party therefore shall bear their own costs.

Dated, signed and delivered at Nairobi this 14th Day of February, 2017

A. MBOGHOLI MSAGHA

JUDGE