



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISUMU
MISC. CIVIL APPLICATION NO 44 OF 2015
OTIENO, RAGOT & COMPANY ADVOCATES.....APPLICANT
VERSUS
GABRIEL NDOLO.....RESPONDENT

RULING

The Advocate filed herein his advocate/client bills of costs dated 27th April 2015 for professional services rendered to the plaintiff in **Kisumu Chief Magistrate's Court Civil Case No. 50 of 2006** and **Kisumu Civil Appeal NO 146 of 2014.**

Before the bill could be taxed, the client/respondent challenged it by a notice of Preliminary Objection filed on 29.6.15, which in essence sought an order to strike out the bill of costs upon the ground that the Advocate's claim for costs, "being a claim founded on a contract for provision of legal services, falls within the purview of section 4 of the Limitation of Actions Act, and is therefore time-barred".

Further to the parties' affidavits, the advocates on 28.4.16 agreed to have the Preliminary Objection herein disposed of by way of written submissions but at the time of writing this ruling, only the applicant had filed its submissions.

The applicant holds the view that it is entitled for representing the respondent in up to 27th June 2013 when the judgment in **Kisumu Civil Appeal NO 146 of 2014** was delivered.

The issue for determination therefore is whether the applicant's bill of costs is time barred. Faced with an almost similar situation, Waweru J in the case of **H.C. Misc application no. 527 of 2011 at Nairobi Abincha & Co. Advocates v Trident Insurance Co. Limited** cited by the respondent herein held:-

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.

Therefore, this being a contractual relationship, the Limitation of Actions Act and specifically Section 4 (1) (a) is applicable to the bill of costs herein. Halsbury's Laws of England 4th Edition Vol. 28 at page 419 paragraph 820, states inter alia that " ... **once there has been a complete cause of action arising out of contract or tort, time begins to run...**". Further relevant texts from Halsbury's Laws of England 4th Edition Vol. 28 at page 452 paragraph 879 state that:

“... in relation to continuous work by solicitor, such as the bringing and prosecuting or defending of an action:

1.

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,

In this case, an appeal was preferred from the judgment in *Kisumu Chief Magistrate’s Court Civil Case No. 50 of 2006*. Time did therefore not begin to run until 27th June 2013 when *Kisumu Civil Appeal NO 146 of 2014* was decided.

I therefore hold that the bills of costs dated 27th April 2015 is not time-barred. The Preliminary Objection filed on 29th June 2015 is thus determined in favour of the applicant. It is so ordered.

DATED AND DELIVERED ON THIS 6th DAY OF April, 2017

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Clerk - **Winnie**

Applicant - **Mr. Otieno h/b for Mr. Ragot**

Respondent - **No appearance**