



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**MISC. CIVIL APPLICATION NO 40 OF 2015**

**OTIENO, RAGOT & COMPANY ADVOCATES..... APPLICANT**

**VERSUS**

**GABRIEL NDOLO.....RESPONDENT**

**RULING**

The Advocate filed herein his advocate/client bills of costs dated 23rd April 2015 for professional services rendered to the plaintiff in Kisumu Chief Magistrate's Court Civil Case No. 50 of 2006. Before the bill could be taxed, the client/respondent challenged it by a notice of Preliminary Objection filed on 30.6.15, 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 agreed to have the Preliminary Objection herein disposed of by way of written submissions which they dutifully filed in time to support their clients' respective rival positions

The bill of costs herein is based on an advocate-client relationship for services rendered in Chief Magistrate's Court Civil Case No. 50 of 2006 whose judgment was delivered way back on 15th November 2007. The respondent holds the view that time started running from the date of judgment and that the bill of cost was filed on 23rd April 2015, which is about seven (7) years from date of judgment is time-barred.

The applicant submitted that although judgment was delivered way back on 15th November 2007; the matter is still pending in court awaiting determination on the issue of defendant's bill of costs. The applicant submitted that it has attended court to protect the respondent's interest on all occasions when the matter came up for taxation.

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 4<sup>th</sup> 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 4<sup>th</sup> 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. If a solicitor sues for his costs in an action, the statute of limitation only begins to run from the date of the termination of the action or the lawful ending of the retainer of the solicitor.***

As already seen, time begins to run from the date of completion of the work or lawful cessation of the retainer. In a letter dated 3.9.11, attached to a replying affidavit sworn on 4th August 2015 by Jude Ragot advocate, the respondent was requesting the applicant to intercede on his behalf to appeal to the defendant to accede to an out of court settlement in Chief Magistrate’s Court Civil Case No. 50 of 2006. Other letters dated 27.2.13; 27.3.13; 30.4.13 and 17.10.13 exchanged between defendant’s advocates, M/s Khakula & Company Advocates and the applicant demonstrate that the applicant was appearing in the matter of the defendant’s bill of costs pending in Chief Magistrate’s Court Civil Case No. 50 of 2006.

There is no evidence of the lawful ending of the retainer of the applicant. I therefore hold that the time did not start to run after judgment was delivered on 15th November 2007 for the reason that applicant was retained by the client to defend the defendant’s bill of costs in 2013 in Chief Magistrate’s Court Civil Case No. 50 of 2006.

The Preliminary Objection filed on 30th 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**