



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA AT NYERI MISCELLANEOUS CIVIL APPLICATION
NO. 318 OF 2013**

IN THE MATTER OF ADVOCATE/CLIENT BILL OF COSTS

BETWEEN

GATHIGA MWANGI & CO. ADVOCATES.....APPLICANT

VERSUS

JANE MUMBI KIANO.....RESPONDENT

RULING

The applicant advocates filed a bill of costs against their former client for taxation as a miscellaneous application herein. The costs sought to be taxed are alleged to have arisen from the professional services rendered in **High Court Civil Suit No. 16 of 1995** in which the applicants represented the respondent. It is not clear to me why the applicant chose to file the bill of costs in a separate miscellaneous application rather than in the suit itself.

Be that as it may, when the bill was presented for taxation before the deputy registrar, counsel for the respondent raised a preliminary objection to the taxation on the ground that the taxation was statute barred by dint of **section 4 of the Statute of Limitations Act, Cap. 22**. The deputy registrar did not entertain the arguments on this issue but instead ruled that the issue was outside his jurisdiction and referred the parties to the judge for its determination. It is this particular issue that is now the subject of the ruling herein.

Both counsel filed written submissions which I have duly considered. Counsel for the respondent has submitted that judgment in **High Court Civil Case No. 16 of 1995** was delivered in February, 2007 and that the bill of costs was filed on 17th December, 2013 more than six years after the completion of the services rendered and well outside the six years limitation period.

Counsel also urged that the bill as filed is in contravention of **section 51(1) of the Advocates Act**; his argument is that the bill is not brought 'in the matter of a particular advocate' and therefore it is not clear for whose benefit the bill is filed. Counsel relied on the decision in **High Court Miscellaneous Application No. 517 of 2011, Abincha & Company versus Trident Insurance Company Ltd (2013) eKLR** where Hatari, J. struck out a bill of costs that was filed between 8 to 11 years after the event.

Counsel on whose behalf the bill was filed in court filed a replying affidavit and deposed that he was appointed to act on 15th March, 2005 and that he acted for the respondent until 3rd October, 2013 when he withdrew from acting for lack of instructions; accordingly, so the learned counsel urged, time started running from the 3rd October, 2013.

Counsel for the applicant appeared to admit that the issue of retainer is a contractual issue and to that extent the respondent ought to have demonstrated by way of affidavit evidence when the retainer commenced and ceased. This, according to counsel, was an essential basis for the argument that the respondent propounded. But even then counsel still admitted that the applicant counsel was appointed on 15th March, 2005 and that his contract was terminated by an order of the court on 3rd October, 2013 and therefore the issue of limitation does not arise.

It is common ground between both counsel for the applicant and the respondent that the issue of retainer is contractual and the therefore any claim under it is subject to the **Limitations of Actions Act, Cap. 22**. The pertinent part of section 4 of that Act states:-

4. Actions of contract and tort and certain other actions

(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;

Thus far there is no dispute; the point of departure between the parties appears to me to be the point at which time started running. According to the applicant, time started running when he ceased acting on 3rd October, 2013 while the respondent's position is that the clock started ticking in February, 2007 when the court delivered its judgment in the matter in which the applicant's services were provided.

The answer as to which of the opposing arguments is the correct interpretation of the law appears to be in **Halsbury's Laws of England, 4th Edition, Volume 28** at paragraph 879 which was cited with approval by Hatari, J. in the *Abincha & Co. Advocates versus Trident Insurance Co Ltd case* (supra); it is stated in that paragraph as follows:-

879. Solicitors costs in relation to continuous work by a solicitor, such as the 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 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 a 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 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 run against a solicitor from the completion of the work and not from the delivery of the bill. If only some of the items included in the bill are statute barred, the solicitor may recover in respect of the balance.

This citation must have been making reference to the Solicitor's Act, 1974 which applies in England but, 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 judgment was delivered assuming that counsel was then still on record and not from the date counsel ceased acting, after the delivery of the judgment.

Coming back to the instant case, the record shows that judgement in High Court civil case was delivered

on 14th November, 2007 and not February, 2007 as suggested by the learned counsel for the respondent; it is also apparent from the record that being dissatisfied with the judgment, the plaintiff in the suit filed an appeal against the decision of the court vide a notice of appeal dated 15th November, 2007.

According to the passage in the Halsbury's Laws of England cited above, time does not run where there is an appeal from the judgment; it only starts running from such a time that the appeal has been determined or the solicitor has ceased to act.

None of the parties informed the court of the fate of the appeal that was filed against the judgment delivered by this court on 14th November, 2007; it may be that the appeal is yet to be heard and if so, the applicant is deemed to have been still on record for the responded until the 3rd October 2013 when he ceased acting. This then implies that that he was well within the statutory limitation period to file the bill of costs when he filed it on 6th November, 2013.

If the appeal was determined or terminated early enough as to slam the door against the filing of the bill of costs, then it was incumbent upon the respondent to inform the court so. In the absence of such information this court cannot proceed on the assumption the bill was filed outside the limitation period either because the appeal may have been determined or terminated more than six years before the applicant lodged his bill of costs. I would in the circumstances overrule the preliminary objection with costs to the applicant. I direct the taxation of the applicant's bill to proceed for taxation before the deputy registrar. Orders accordingly.

Dated, signed and delivered in open court this 3rd day of June, 2016

Ngaah Jairus

JUDGE