



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**COMMERCIAL & ADMIRALTY DIVISION**

**MISC. CIVIL APPLICATION NO.1361 OF 2007**

**MEREKA & COMPANY ADVOCATES .....APPLICANT**

**-VERSUS-**

**INVESCO ASSURANCE CO. LTD.....RESPONDENT**

**RULING**

[1] This Ruling is in respect of the Notice of Motion dated **15 September 2015**. The application was filed by **M/s Mereka & Company Advocates** under **Section 51(2) of the Advocates Act, Chapter 16 of the Laws of Kenya** for orders that judgment be entered in their favour in the sum of **Kshs. 43,532.50** in terms of the Certificate of Taxation dated **10 January 2007** together with interest at 14% from the date of judgment till payment in full, and that a Decree be issued forthwith for execution.

[2] The application is supported by the Affidavit of **David Mukii Mereka** annexed thereto, sworn on **15 September 2015** in which it was averred that the Applicant filed a Bill of Costs herein dated **27 August 2007** in the sum of **Kshs. 70,985/=**, and that the Bill of Costs was taxed on **1 November 2007** in favour of the Applicant in the sum of **Kshs. 43,532.50** as per the Certificate of Taxation marked **DMM1**. It was further averred that the Respondent has not filed any reference from the said taxation, and therefore that it is only just, fair and reasonable that judgment be entered in terms of the Certificate of Taxation dated **10 January 2007** (which appears to have been a typographical error, granted that the taxation was done on **1 November 2007**).

[3] In paragraph 5(a)-(g) of the Supporting Affidavit, the Applicant explained the apparent delay in seeking judgment on the basis of the Certificate of Taxation, contending that the same is attributable to the Respondent. To that end, the documents marked **DMM2-DMM6** were exhibited as annexures to the Supporting Affidavit to demonstrate that the Applicant was vigilant in pursuing costs, and that the Respondent is in the circumstances estopped from pleading limitation.

[4] The application was fixed for hearing on **26 October 2016** and notice thereof duly given to the Respondent as demonstrated by the Affidavit of Service sworn by **John Githinji Gachau** on **25 October 2016**. Accordingly, the application was urged *ex parte* by **Ms. Abok** for the Applicant, there being no justification for the Respondent's non-attendance.

[5] **Section 51(2) of the Advocates Act** provides that:

**“The certificate of the Taxing Officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”**

In the premises, a Certificate of Taxation having been issued herein in the sum of **Kshs.43,532.50** by the Taxing Officer, and there being no indication that the said Certificate has been set aside or altered by the Court, the Applicant would be entitled to judgment pursuant to the aforestated provision.

[6] It is noted however that it is about 9 years since the Certificate of Taxation was issued, and the

question is whether the matter is time barred by dint of **Section 4** of the **Limitation of Actions Act, Chapter 22 of the Laws of Kenya**. The High Court in Nyeri had occasion to deal with a similar application and the Learned Judge, **Wakiaga J**, had the following to say in **Gachiri Kariuki & Co. Advocates vs. Invesco Assurance Co. Ltd [2014] eKLR**:

**"...whereas it is true that the relationship between an advocate and client is contractual and that the limitation period of six years is applicable, this may be raised at the taxation level. Once the bill of costs has been taxed it becomes a judgment of the court and therefore section 4 of the Limitation of Actions Act which provides for 12 years is applicable."**

[7] I would be of the same persuasion and hold that the Notice of Motion dated **15 September, 2015** is competently before the Court. In any event, by its letter dated **22 November 2012**, the Defendant unequivocally acknowledged that the fees were outstanding and due, and proceeded to make a proposal to pay the same by instalments. In the premises, the clock was re-set in terms of **Section 23(3)** of the **Limitation of Actions Act**. Clearly therefore, in either case, the application would be timeous. In the premises, I would allow the same and grant the prayers sought in Paragraph 1, 2 and 3 thereof. Accordingly judgment is hereby entered in favour of the Applicant in the sum of **Kshs.43,532.50** together with interest and costs of the application.

It is hereby ordered.

**SIGNED, DATED and DELIVERED at NAIROBI this 9th DAY OF NOVEMBER, 2016**

**OLGA SEWE**

**JUDGE**