



**Makumi Mwangi & Company Advocates v Nairobi City Water and
Sewerage Company Limited (Miscellaneous Civil Application E488 of 2023)
[2025] KEHC 13511 (KLR) (Civ) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13511 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

MISCELLANEOUS CIVIL APPLICATION E488 OF 2023

JN MULWA, J

SEPTEMBER 25, 2025

BETWEEN

MAKUMI MWANGI & COMPANY ADVOCATES APPLICANT

AND

**NAIROBI CITY WATER AND SEWERAGE COMPANY
LIMITED RESPONDENT**

RULING

(On Preliminary Objection dated 11/10/2023)

1. The Advocate/Client Bill of Costs dated 5/7/2023 arose from Milimani Misc. Civil Application No 441 of 2015. Before it could be taxed, Nairobi City Water (hereinafter the client) herein gave Notice of Preliminary Objection (PO) dated 11/10/2023 raising the following objections:
 - i) That the bill of costs is premised on Advocate/Client relationship, which is contractual in nature.
 - ii) That pursuant to Section 4(1) of the *Limitation of Actions Act*, Cap 22 Laws of Kenya the claim by the Advocates is time barred having been filed more than six (6) years from the date when the cause of action arose.
 - iii) That the proceedings are therefore bad in law and an abuse of the Court process and ought to be dismissed with costs to the Respondent.
2. In response to the Preliminary Objection the Advocates filed a replying affidavit on 23/10/2023 sworn by its Advocate Beth Njeri Mwangi in which she posits that the primary suit that gave rise to the bill of costs was concluded or about March 2017, upon which the bill was drawn and served upon the client,



and gathers that the obligation on the client to pay costs is not disputed save for the amount of fees which the taxing officer is mandated to tax, and that; the six-year period during which a bill of costs should be filed had not lapsed adding that the latest communication by email with the Advocates was about 10/1/2018 annexure- BNM1, hence time started to run from the said acknowledgment, which is well within the limitation period.

Both parties filed submissions.

Respondent's(Client) Submissions Dated 21/10/2023.

3. In support of the Preliminary Objection, the Client relies on Section 4 of the *Limitation of Actions Act*, Cap 22 that provides that actions founded on contract have to be filed within six months from the date when the cause of action arose, in this case from the time they completed the case on behalf of the client upon the issuance of the Certificate of Taxation dated 10th January 2017, as well as stating that the firm of Makumi Mwangi Advocates completed the continuous tasks on 4th March 2023, hence the matter became time barred six years from 4th March 2023.
4. The Client has relied on the case of *John Omollo Nyakongo t/a H.R Ganijee & Sons v Kenya Power & Lighting Co. Ltd* [2022] eKLR wherein the court held that:-

“... It is not in doubt that the issue of limitation goes to the jurisdiction of the Court and the same does not require ascertainment of facts. The Court is only required to determine what the law says and whether indeed the suit is barred by Limitation of Action will not require the probing of evidence. All that the Court is expected to do is determine what the law says, and this means that the same raises a pure point of law.”
5. On the matter of the acknowledgment of the debt, the client submitted that the purported e-mail as drawn does not amount to an acknowledgement of debt. In any event, the e-mail was not drawn by an authorized representative for purposes of binding the Applicant.
6. The client relied on *Telkom Kenya Limited v Kenya Railways Corporation* [2018] eKLR where Justice J.L.Onguto held:

“It may even be, as was held in *Bertam Ltd v Consolidated Agencies Ltd* [1962] 1 EA 212, in a signed balance sheet of a company. It may take any form. The document must however be signed. I take the view that to amount to an acknowledgment, a document ought to contain an unequivocal recognition and acceptance of the claim being made.”
7. For the foregoing the client held the view that there was no such or alleged acknowledgement of the debt at the stated time. And urged the court to dismiss the bill of costs for being time barred.

Advocates Submissions in Opposition to the Preliminary Objection

8. The Advocates reiterate that the time to file their bill of costs started to run from 10/01/2018, being the date of their last communication by email with the client annexed as “BNM1” where the client raised issue as to amount it ought to have paid as legal fees but did not dispute that the legal fees was payable in respect of the case the Advocates had represented it.
9. To the Advocates, the above was an acknowledge that it owed the Advocates legal fees but the amount was not agreed upon, citing the decision in the case of *Women Enterprise Fund v Pamoja Women Development Program* (2021) eKLR .



10. The Advocates reassert that the communication having been on 10/1/2018, then the period of six years had not lapsed at the time the bill of costs was filed.

Analysis and Determination

11. The question whether there was an acknowledgement that legal fees was owing from the Client to the Advocates on account of services rendered in the primary suit is what concerns the court for determination. The court has taken the liberty to read email dated 10/1/2018. The client in my considered view does not dispute its obligation to pay the legal fees, but the question was the amount.
12. The law on Preliminary Objection was well settled by Court of Appeal in the case of *Mukisa Biscuits Manufacturing Company Ltd v West End Distributors Ltd* [1969] EA 696, where Law JA stated as follows: -

“So far as I'm aware, a preliminary objection consists of point of law which have been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point, may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

Further on Sir Charles Newbold JA stated: -

“The first matter relates to the increasing practice of raising points which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary objection is in the nature of what used to be a demurrer. It raises a point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop.”

13. On whether the present suit is time barred, Section 4 of the *Limitation of Actions Act* cap 22 Laws of Kenya prescribes the limitation period for the institution of suits in regard to various causes of actions.
14. The object of the law of limitation was stated in the case of *Gathoni v Kenya Co-operative Creameries Ltd* (1982) KLR 104 where the Court of Appeal held that:-

“....The law on limitation of actions is intended to protect defendants against unreasonable delay in the bringing of suits against them.”

15. Similarly in the case of *Rawal v Rawal* [1990] KLR 2 the court held that: -

“The object of any limitation is to prevent a plaintiff from prosecuting stale claims on the one hand and on the other hand protect a defendant after he had lost evidence for his defence from being disturbed after a long lapse of time. It is to extinguish claims.”

16. A keen perusal of the rival submissions and the court record points towards a conclusion that a ruling on taxation of costs was delivered on January 2017 and a Certificate of Taxation issued on the same day. Thereafter, it seems that the Advocates continued acting and obtained payment and paid the decree holder then and forwarded receipt for payment to the Client in March 2017.



17. The Advocates argued that the claim relates to alleged breach by non-payment of the fee note dated 24th May 2017.
18. By the Advocates submissions, it is evident that it was holding on correspondence between it and a Mr. Patrick Maina, an employee of the client.
19. It is therefore the court's finding that the Advocates Bill of costs dated 5/07/2023 was filed within the limitation period and therefore not time barred. The preliminary objection dated 11/10/2023 is devoid of merit. It is dismissed with costs.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 25TH DAY OF SEPTEMBER, 2025

.....

JANET MULWA.

JUDGE

