



Gathemia t/a Gatheru Gathemia & Co. Advocates v Sheikh & Sheikh - As Trustees of the Sheikh Fazal Ilahi Noordin Charitable Trust (Environment and Land Miscellaneous Application E187 of 2024) [2025] KEELC 7712 (KLR) (10 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7712 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E187 OF 2024
CA OCHIENG, J
NOVEMBER 10, 2025

BETWEEN

GATHERU GATHEMIA T/A GATHERU GATHEMIA & CO.
ADVOCATES APPLICANT

AND

ABDUL WAHEED SHEIKH AND ABDUL HAMEED SHEIKH AS
TRUSTEES OF THE SHEIKH FAZAL ILAHI NOORDIN CHARITABLE
TRUST RESPONDENT

RULING

1. What is before Court for determination is the Respondent's Notice of Motion application dated the 27th January 2025, where it seeks the following Orders:
 - a. Spent.
 - b. Spent.
 - c. The Honourable Court be pleased to consolidate the Advocate-client Bill of costs filed herein together with the Advocate-Client Bill of costs filed in Misc. Application No. E186 of 2024 for purposes of hearing and determination with Misc. Application No. E187 of 2024 being the lead file.
 - d. The Honourable Court be pleased to strike out and /or dismiss the Advocate - Client bill of costs dated 10th September 2024 on the basis that it is statute barred; and
 - e. Costs be awarded to the Respondent/Applicant.
2. The application is premised on grounds on its face and on the supporting affidavit of Abdul Waheed Sheikh, a trustee of the Respondent. He avers that the Applicant has filed an Advocate-Client



Bill of Costs dated 10th September 2024 seeking instructions fee of Kshs.40, 460, 500/= in the renewal of a lease by way of transmission, relating to the property known as LR 37/67 (formerly 209/193) measuring fourty four (44) acres, unilaterally valued by the Respondent at approximately ksh.4,056,050,000/=. The Deponent avers that the Applicant purported to have received and carried instructions which included: preparing the relevant conveyance documents and aggressively pursuing the registration of the lease through extensive correspondence, attending numerous meetings and continuous engagement with relevant bodies involved.

3. He contends that the Respondent had commenced the process of extending the impugned lease of the suit property through correspondences exchanged between A.W Sheikh & Co. Advocates (the Respondent's in-house counsel) and Commissioner of Lands culminating in issuance of the Letter of Allotment by way of extension of lease.
4. Further, that on or about 2013, on behalf of the Respondent, he engaged the Applicant's legal services on a Retainer basis for which it was paid an agreed monthly Retainer to undertake the following: hold brief for A.W Sheikh of A.W Sheikh & Company advocates (Respondent's in-house counsel) during various absences for treatment abroad during which period the said Counsel would give instructions by phone and email on the conduct of various matters, attend meetings on behalf of A. W Sheikh & Company advocates and convey its prior given instructions in the conduct of various matters. Further, it would write to various state organs and ensure due service of correspondences as drafted and reviewed by A.W. Sheikh Advocate, receive and forward various correspondences as received or to be delivered, network with various officers in the Lands offices and other State offices to overcome likely obstacles in acquiring title, coordinate with senior officers at Nairobi City Council and expedite the process of getting the City Council to evict squatters then occupying the suit property, report for investigations the uttering of forged documents by David Kibara Chege and perjury committed in Misc. Civil Application No. 1531 of 2005 and ensure that the office of the Director of Public Prosecutions took appropriate action.
5. He claims that the only services the Applicant rendered were: receive and transmit various correspondences on the subject of registration of lease; address and serve various correspondences on renewal of lease; accompany the Respondent's in-house Counsel to some meetings and brief in-house Counsel in some of the meetings. He contends that so far, Applicant has been paid kshs.20,202,000/= for the period commencing January 2013 until it ceased acting on its own accord. Further, that that its last service was in June 2018.
6. He avers that the Applicant's Bill of costs is statute barred pursuant to Section 4 (1) of the [Limitation of Actions Act](#), given that the Applicant demanded the sums in the said Bill of Costs formally vide its letter dated 29th July 2017, thus taxing of any Bill should have been on or before June 2024.
7. He states that that the Bill of Costs herein and in Misc. Application No. E186 of 2024 are intertwined and emanate from the same series cause of action and relate to the subject property thus their consolidation will facilitate the efficient and expeditious disposal of the dispute.

Response

8. The application is opposed by the Applicant vide the replying affidavit of Gatheru Gathemia, Advocate. He contends that the Respondent admitted the jurisdiction of this Court by filing an affidavit in response to the Applicant's Bill of Costs. Further, he insists that the services the Applicant rendered to the Respondent were not covered by a Retainer, since there is no evidence of the said Retainer. He claims that the Applicant was only paid Kshs.19,013,050 and not Kshs.20,202,000 for services they rendered.



9. He insists that the scope of instructions for which the Bill of Costs dated 10th September 2024 has been filed is for a prominent role of renewal of lease, which the Applicant duly undertook and there is no evidence that the discharge of instructions for the legal services were paid for save for minimal partial payments.
10. He points out that instructions from the Respondent were to be implemented through various ways including preparation of relevant conveyance documents, dispatch and follow up of extensive correspondences, attending numerous meetings and continuous engagement with relevant bodies thus it is mischievous for the Respondent to claim that the scope of instructions was merely clerical. Further, that the Respondent even managed to get a fresh Letter of Allotment and Lease prepared and released for execution but Mr. Waheed Sheikh refused to execute the same alleging that he required it to have terms similar to the expired lease.
11. He reaffirms that even after the 29th July 2017, the Applicant still discharged instructions by preparing correspondence and attending meetings. To this end, he highlighted several correspondences drafted by the Applicant between 11th July 2017 to 18th January 2019, and other correspondences, between 4th October 2017 to 2019 respectively. He reiterates that the statute of limitation only begins to run from the date of termination of a Retainer thus section 4 (1) of the *Limitation of Actions Act* does not lie as the Respondent cannot confirm the lawful ending of the alleged Retainer between the Applicant and itself.
12. On consolidation of the suit with ELC MISC. E186 of 2024, he avers that the Bills of Cost in this matter and in the said matter are materially different as instructions were distinct, thus consolidation would unfairly prejudice him in terms of taxation of the instruction fees noting that this matter relates to instructions to represent the Client in renewal of a lease by way of transmission, while ELC MISC. E186 of 2024 relates to representation of the Respondent in compulsory acquisition of a portion of subject land.
13. It is noted that most of the averments in the replying affidavit of Gatheru Gathemia Advocate, sworn on 30th September 2025, specifically paragraphs 14-27 mirror those of his replying affidavit filed in ELC MISC. E187 of 2024 where he contended that the scope of the Applicant's instructions related to compulsory acquisition of thirty (13) acres of the suit property by Kenya Roads Urban Authority.
14. The application was canvassed by way of written submissions

Submissions

15. The Applicant's submissions mirror those filed in ELC MISC. E187 of 2024 while the Respondent did not file submissions in this matter.

Analysis and Determination

16. Upon consideration of the instant Notice of Motion application including the respective affidavits and submissions, the following are the issue for determination: Whether the Advocate Client Bill of Costs filed herein should be consolidated with the Advocate-Client Bill of Costs filed in Misc. Application No. E186 of 2024 for purposes of hearing and determination. Whether the Advocate Client Bill of Costs dated 10th September 2024 should be struck out or dismissed for being statute barred.

As to whether the Advocate Client Bill of Costs filed herein should be consolidated with the Advocate-Client Bill of costs filed in Misc. Application No. E186 of 2024 for purposes of hearing and determination.



17. The Respondent seeks for consolidation of the Advocates Client Bill of Costs filed herein with the one in Misc. Application No. E 186 of 2024 for purposes of hearing and determination, which fact is opposed by the Applicant. The Respondent argues that the issues for determination herein mirror those set out in ELC Misc. Application E186 of 2024 save that in this matter, the Applicant's Bill of Costs seeks an instruction fees of Kshs.40, 460, 500/= for allegedly acting for the Respondent in the renewal of a lease by way of transmission, relating to the property known as LR 37/67 (formerly 209/193) which is also the subject property in ELC Misc. E186 of 2024.
18. The Applicant explains that in this suit, it undertook renewal of lease for the Respondent while in ELC Misc Application E186 of 2024, the fulcrum therein revolved around compulsory acquisition of a portion of the subject property.
19. On consolidation of suits, the Supreme Court stated as follows in *Omoke v Kenyatta & 83 others* (Petition 11 (E015) of 2021) [2021] KESC 27 (KLR):

“Consolidation of suits or appeals will be ordered where there are common questions of either law or fact in two or more suits or appeals and where it is desirable that all the related matters be disposed of at the same time.”
20. From perusal of the two Advocate Client Bills of Costs filed by the Applicant in ELC Misc Application E186 of 2024 and herein, I opine that insofar as the same revolved around the same suit property, the instructions herein related to renewal of a lease over the subject property by way of transmission while in Misc. Application E186 of 2024 it concerned compulsory acquisition of a portion of the said property. Further, I note that the Respondent has not disputed that the Applicant provided legal services in respect to renewal of a lease and compulsory acquisition of the said land. It is my considered view that these two instructions though touching on the same land, dealt with different issues.
21. In the foregoing while relying on the aforementioned decision, I decline to consolidate the Advocate Client Bill of Costs filed herein with the Advocate-Client Bill of costs filed in Misc. Application No. E186 of 2024 and direct that the two be taxed separately.

As to whether the Advocate Client Bill of Costs dated 10th September 2024 should be struck out or dismissed for being statute barred.
22. The Respondent has sought that the Applicant's Advocate Client Bill of Costs dated 10th September 2024 should be struck out or dismissed for being statute barred, which fact is opposed by the Applicant. The Respondent insists that the Applicant's Bill of Costs is statute barred pursuant to Section 4(1) of the *Limitation of Actions Act*, given that the Applicant had already demanded the sums in the said Bill of Costs formally vide its letter dated 29th July 2017 thus taxing of any bill should have been on or before June 2024.
23. The Applicant on the other hand explains that he continued to receive and deal with the issues revolving around the subject property even after the 29th July 2017. Further, that it still discharged instructions by preparing correspondence and attending meetings on behalf of the Respondent. It highlighted several correspondences it drafted between 11th July 2017 to 18th January 2019, and other correspondences, between 4th October 2017 to 2019 respectively. It insisted that the statute of limitation only begins to run from the date of termination of a Retainer, thus section 4(1) of the *Limitation of Actions Act* does not lie as the Respondent cannot confirm the lawful ending of the alleged Retainer between the law firm and itself.
24. Section 4 (1) of the *Limitation of Actions Act* provides that:



‘(1) (a) 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’

25. From perusal of the annexures to the parties’ respective affidavits, I do not find any Retainer between them. I further wish to highlight a few of the last communication between the Respondent and Applicant to determine when the period of limitation begun to run. I note on the 13th September, 2018, the Applicant wrote to the Respondent enclosing a valuation report from Advent Valuers in respect to the subject property. Further, the Applicant sent a letter dated the 21st January, 2019 to the Respondent whose reference was registration and renewal of lease on land reference No. 37/63 (formerly 209/193) where they attached a copy of a letter from the National Land Commission dated 18th January, 2019, which had been sent to the Applicant in respect to renewal of lease over the subject property.
26. On the determination of the period of limitation in respect to filing of an Advocate Client Bill of Costs, the Court of Appeal held as follows in *Otieno, Ragot & Company Advocates v National Bank of Kenya Limited (Civil Appeal 19 of 2018) [2023] KECA 685 (KLR) (9 June 2023) (Judgment)*;
- “An advocate ought to know that his relationship with his client is contractual in nature and governed by the *Limitation of Actions Act* and would be to blame for any consequences that may arise from his/her failure to take out proceedings to recover fees within the time set by statute.”
27. Based on the facts as presented while relying on the legal provisions cited including the decision quoted, I find that the Advocate Client Bill of Costs dated the 10th September 2024 was filed within the six-year period as the last communication made between the parties herein in respect to the subject property and renewal of lease was done in January, 2019. In the foregoing, I do not find the impugned Advocate Client Bill of Costs Statute barred and direct that the same be placed before a Taxing officer for taxation.
28. In the foregoing, I find the instant Notice of Motion application unmerited and will proceed to dismiss it with costs.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 10TH DAY OF NOVEMBER, 2025.

CHRISTINE OCHIENG

JUDGE

In the presence of:

Khatete for Applicant

Oundo for Respondent/ Client/Applicant

Court Assistant: Joan

