



**Gathemia t/a Gatheru Gathemia & Company Advocates v Abdul Waheed Sheikh and Abdul Hameed Sheikh as Trustees of the Sheikh Fazal Ilahi Noordin Charitable Trust (Environment and Land Miscellaneous Application E186 of 2024) [2025] KEELC 7702 (KLR) (10 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7702 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E186 OF 2024  
CA OCHIENG, J  
NOVEMBER 10, 2025**

**BETWEEN**

**GATHERU GATHEMIA T/A GATHERU GATHEMIA & COMPANY  
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 27<sup>th</sup> 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. E187 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 10<sup>th</sup> 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. He avers that the Applicant has filed an Advocate-Client Bill of Costs dated 10<sup>th</sup> September 2024 seeking an instruction fees of Kshs.50 million, purportedly in respect of professional services fees rendered at the behest of the Respondent, when the National Land Commission (NLC) intended to compulsorily acquire thirteen (13) acres out of LR 37/67 (formerly 2o9/193) measuring 44 acres for the construction of a link road.
3. He claims the scope of its instructions to the Applicant included pursuing compensation at the rate of Kshs. 260 million per acre and engaging Kenya Urban Roads Agency to move the link road for which a thirteen (13) acre portion of the suit property was being acquired to the edge of the subject property as opposed to it passing through the middle of the property.
4. He explains that 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 (Client'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; write to various state organs and ensure due service of correspondences as drafted and reviewed by A.W. Sheikh; 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 takes appropriate action.
5. He insists that the only services the Applicant rendered were: receive and transmit various correspondences on the subject of intended compulsory acquisition of thirteen (13) acres out of the subject property; address and serve various correspondences on renewal of lease; accompany its in-house counsel to some meetings and brief in-house Counsel on some of the meetings. He contends that so far, the Applicant has been paid Kshs.20,202,000/= for the period commencing January 2013 until it ceased acting on its own accord. Further, that its last service was in June 2018.
6. He disputes instructing the Applicant to seek compensation for the portion of the subject property. He contends that the process of the intended compulsory acquisition was never completed by the National Land Commission. He reaffirms that the Advocate Client 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 29<sup>th</sup> July 2017 thus taxing of any bill should have been on or before June 2024.
7. He also avers that that the Advocate Client Bill of Costs herein and in Misc. Application No. E187 OF 2024 emanate from the same series cause of action and relate to the same 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 and that the Applicant's services to the Respondent were not covered by a Retainer and as such there is no evidence of the same. Further, that the scope of instructions for which the Advocate Client Bill of Costs dated 10<sup>th</sup> September 2024 has been filed



is for a prominent role, acting for the Respondent in pursuing a claim for compulsory acquisition by Kenya Urban Roads Authority, and there is no evidence that the discharge of instructions for the legal services were paid for save for minimal partial payments.

9. 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.
10. He avers that even after 29<sup>th</sup> 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 11<sup>th</sup> July 2017 – 18<sup>th</sup> January 2019, and other correspondences with the Kenya Urban Roads Authority, between 4<sup>th</sup> October 2017- 27<sup>th</sup> October 2022 respectively. He reiterated that the statute of limitation only begins to run from the date of termination of a Retainer and as late as 18<sup>th</sup> January 2019, the Applicant was receiving correspondences on behalf of the Respondent with regards to the subject matter and even received legal fees of ksh.152, 000/= on 18<sup>th</sup> October, 2022 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.
11. On consolidation of the suit with ELC Misc. E187 of 2024, he avers that the Advocate Client Bills of Cost in this matter and in the said matter are materially different as instructions were different, thus consolidation would unfairly prejudice it, in terms of taxation of the instruction fees noting that ELC Misc. E187 of 2024 relates to instructions to represent the Respondent in renewal of a lease by way of transmission, while the instant suit relates to representation of the Respondent in compulsory acquisition of a portion of the subject property.
12. The Application was canvassed by way of written submissions.

### **Submissions**

13. The Respondent submits that its Advocate – Client relationship with the Applicant was governed by a Retainer agreement for which the Applicant was compensated for and that Section 46 (6) of the Advocates’ Act precludes an advocate from taxing a Bill of Costs where an agreement for payment of fees exists. Further, that correspondences between them indicates that the Applicant would be paid a monthly fee of Kshs. 200,000/= which the Applicant proposed to vary to Kshs. 230,000/= citing tax concerns thus the Applicant is in no position to renege on it. It further submitted that the services rendered by the Applicant on its behalf fall within the circumference of the specifications of the Retainer entered into by the parties and that the contention that the Applicant continued to act after formal demand of 29<sup>th</sup> July 2017 denotes unjustified enrichment. It insisted that the Applicant’s Bill of Costs is statute barred by virtue of Section 4 (1) (a) of the *Limitation of Actions Act*. Further, that where there is a meeting of the mind between parties, a Retainer agreement would be binding.
14. To buttress its averments, it relied on the following decisions: Omulele & Co. Advocates v Synresins Limited [2013] eKLR; Shiva Enterprises v Mwangi Njenga & Company Advocates [2020] eKLR; Lubulellah & Associates v Gilbi Construction Limited [2024] eKLR; Eldo City Limited v Corn Products Kenya Ltd & another [2013] eKLR and Abincha & Company Advocates v Trident Insurance company Limited [2013] eKLR.
15. On its part, the Applicant submits that the Respondent is bound by its pleadings and cannot turn around to challenge jurisdiction by way of instant application owing to its earlier admission of the Court’s jurisdiction by way of affidavit in response to the impugned Bill. It submitted that the requirements of Section 45 of the *Advocates Act* are strict as to the validity of a Retainer agreement



in that, it must be in writing and signed by the Client and in the instant case, the Respondent has not produced any written agreement between the parties as to constitute an agreement under the said provisions, thus the Court cannot be fettered to tax the Bill of Costs dated 10<sup>th</sup> September 2024. Further, that it is trite that in contracts, the onus of proving the existence of any agreement lies with the person that wishes to enforce it. It is its submissions that being that the Limitation of Actions is applicable in claims for recovery of costs, it is important to decipher when the cause of action accrued or crystallized. Further, that while the Respondent claims that the Applicant ceased acting on 29<sup>th</sup> July 2017, the discharge of legal services went on well beyond that date and it has been receiving payment for the services discharged as recently as October 2022, thus the issue of Limitation does not arise.

16. To support its arguments, it relied on the following decisions: *Dakianga Distributors (K) Ltd vs Kenya Seed Co Ltd* [2015] eKLR; *Omulele & Tollo Advocates v Mount Holdings Limited* [2016] KECA 523 (KLR); *Invesco Assurance Company Ltd v J. G. Kariuki t/a Gachiri Kariuki & Co. Advocates* [2013] KEHC 2387 (KLR); *Omar Kemal Amin & Co. Advocates v Susanna Rubbioli* [2012] KEHC 777 (KLR) and *Abincha & Co Advocates v Trident Insurance Co Ltd* [2013] eKLR.

### **Analysis and Determination**

17. Upon consideration of the instant Notice of Motion application including the respective affidavits, annexures and rivalling submissions, the following are the issues for determination: Whether there existed a retainer between the Respondent and the Applicant. Whether the Court should consolidate the Advocate Client Bill of Costs filed herein with that filed in Misc. Application No. E187 of 2024. Whether the Advocate Client Bill Costs dated 10<sup>th</sup> September 2024 is statute barred.

As to whether there existed a Retainer between the Respondent and the Applicant.

18. The Respondent urges this Court to strike out the Applicant's Bill of Costs dated 10<sup>th</sup> September 2024 on the basis that a Retainer was in place between them from 2013, evidenced by correspondences and payments. The Applicant has denied the existence of a Retainer agreement, and contends that the Respondent issued it with instructions to act for it in a complex matter concerning the intended compulsory acquisition of part of Land Reference No. 37/63 (formerly known as 209/193 Nairobi) measuring approximately 44.132 acres out of which 13.1333 acres was slated for compulsory acquisition and that it discharged the instructions but has not been paid. It insists that the correspondences do not meet the standard for a Retainer as set out in Section 45 of the [Advocates Act](#).
19. On Retainer, Section 45 of [Advocates Act](#) provides inter alia:

- “(1) Subject to section 46 and whether or not an order is in force under section 44, an advocate and his client may—
  - (a) before, after or in the course of any contentious business [Civil or Criminal Court] make an agreement fixing the amount of the advocate's remuneration in respect thereof;
  - (b) .....
  - (c) ..... and such agreement shall be valid and binding on the parties provided it is in writing and signed by the client or his agent duly authorized in that behalf.”



20. In the case of Muriithi Kireria & Associates Advocates v Kenya Planters Co-operative Union [2017] eKLR the Court noted that:

“.....the term retainer is used to describe a contract between an Advocate and client for the provision of legal services. There can therefore be no retainer unless the elements of a contract are present, principally consensus ad idem (agreement) between the parties. The existence of the agreement, consistent with principles of contractual creation, can be evidenced in writing or orally. Aside, I also bear in mind the observations of Scott L.J in Groom v Crocker [1938] 2 All ER 394 413 where he stated that: - “A solicitor, as a professional man, is employed by a client just as much as is a doctor or an architect or a stockbroker, and the mutual rights and duties of the two are regulated entirely by the contract of employment. The relationship is normally started by a retainer, but the retainer will be presumed if the conduct of the two parties shows that the relationship of solicitor and client had in fact been established between them” Emphasis mine

21. From the averments in the respective affidavits and perusal of the annexures therein, the Respondent did not furnish court with a copy of the Retainer. In the foregoing while associating myself with the decision quoted, I find that there was no Retainer between the Respondent and Applicant as had been claimed by the Respondent.

**As to whether the Court should consolidate the Bill of costs filed herein with that filed in Misc. Application No. E187 of 2024.**

22. The Respondent has sought for consolidation of the Advocate Client Bill of Costs herein with the same in Misc. Application No. 187 of 2024 which fact is opposed by the Applicant who contends that the instructions in the two matters culminating in the impugned Advocates Clients Bill of Costs are distinct, although the subject property is the same. Further, that in the instant case, the Respondent issued instructions to the Applicant to provide legal services in compulsory acquisition of land while in Misc. Application No. E 187 of 2025, it concerned renewal of Lease.

23. On the issue of consolidation of suits, in Law Society of Kenya v Centre for Human Rights & Democracy & 12 Others [2014] eKLR, it was held that:

“The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes, and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never meant to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party that opposes it.”

24. On perusal of the impugned Advocate Client Bills of Costs, it is my considered view that insofar as the same revolved around the same subject property, the instructions herein related to compulsory acquisition of a portion of the said property while in Misc. Application No. 187 of 2024, it revolved around renewal of a lease over the same property, by way of transmission. To my mind, I find that the two sets of instructions though touching on the same land, dealt with different issues.

25. In the circumstances while associating myself with the cited decision, I decline to consolidate the Advocate Client Bills of Costs filed herein with the Advocate-Client Bill of costs filed in Misc. Application No. E187 of 2024 and direct that the two be taxed separately.



**As to whether the Advocate Client Bill Costs dated 10<sup>th</sup> September 2024 is statute barred.**

26. The Respondent argues that the Applicant's impugned Advocate Client Bill of Costs is statute-barred by dint of Section 4 (1) of the *Limitation of Actions Act*, as it was filed more than six years after the date of formal demand, which was in 2017. The Applicant has insisted that discharge of legal services offered to the Respondent went on well beyond 2017. Further, that the Applicant has been receiving payment for the services discharged as recently as October 2022 thus the issue of Limitation does not arise.
27. 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.”
28. 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.’
29. From perusal of the annexures to the Applicant's and Respondent's respective affidavits, I note the Respondent has not denied that it effected certain payment to the Applicant in October, 2022. With this fact alone, I opine that time could only have begun to run in October 2022 after the last payment.
30. 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 10<sup>th</sup> September 2024 was filed within the six-year period as Respondent even effected some payment in October, 2022. In the foregoing, I do not find the impugned Bill of Costs Statute barred and direct that the same be placed before a Taxing officer for taxation.
31. 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 10<sup>TH</sup> DAY OF NOVEMBER, 2025**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:

Khatete and MC Ronald for Applicant

Oundo for Client/Applicant

Court Assistant: Joan

