

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

MISC APPLICATION NO E044 OF 2024

**BOSIRE GICHANA & COMPANY
ADVOCATES.....APPLICANT**

VERSUS

**KISII COUNTY GOVERNMENT.....
RESPONDENT**

RULING

1. Before me for determination is a preliminary objection dated 24th September 2024. It is based on reasons that:

- a) The suit herein as filed vide Bill of Costs dated 15th April 2024 is fatally and incurably defective in law and as such cannot stand or be ventilated before this Honorable court. Refer to Part (II) A Sections 4 (1) (a) & (4) of the Limitation of Actions Act Cap 22 Laws of Kenya.
- b) The suit contravenes mandatory provisions of Law.
- c) The suit is fatally and incurably defective and cannot stand in Law.
- d) The continued pendency of this suit is an abuse of the process of this Honourable court.

- e) The prayers in this suit are misconceived, and misled and above all are exorbitant, unreasonable and not based on actual certificate of costs.
- f) The entire suit herewith is an abuse of the process of this court and ought to be dismissed with costs.

RESPONDENT SUBMISSIONS

2. The respondent submitted that the Applicant entered into a contract for the provision of legal services with the defunct KISII MUNICIPAL COUNCIL (currently the COUNTY GOVERNMENT OF KISII)- the Respondent herein in a matter, KISII CMCC NO 406 OF 2006; ISIAH RATEMO NYAMARI vs THE TOWN CLERK KISII MUNICIPALITY & ANOTHER. The said matter was last in Court on the 5th March 2008 and has never progressed since then since the matter was dismissed for want of prosecution, (reference made to item No 12 of the Bill of Costs dated 18th April, 2024.) 16 years later, without any explanation or leave of Court the Respondent sneaks to court with a bill of cost supposedly emanating from the instructions he received from the Respondent in a suit KISII CMCC NO 406 OF 2006; ISIAH RATEMO NYAMARI vs THE TOWN CLERK KISII MUNICIPALITY & ANOTHER for taxation.

They stated that it is trite law that actions based on contract are statutorily time barred if brought after Six years. If any such claim must be entertained after the expiry of the required six years it must be done with leave of Court vividly

explaining the reasons for the delay. They relied in the case of ABINCHA & CO ADVOCATES Vs TRIDENT INSURANCE CO LTD (2013) eKLR.

3. It was further submitted that the Applicant entered into a contract for the provision of legal services with the Respondent in the year 2007. Judgment was rendered in the said matter on the 23rd March 2010 thereby terminating the contract between the parties therein. Time started running as at the time of delivery of Judgment. Even assuming that the Applicant was further retained by the Respondent to canvass the Application for stay of execution in the matter, time started running after delivery of Ruling in the Application for stay on 25. 11. 2010 (reference made to item 65 of the Bill of Costs dated 1st July 2024.) That therefore a delay of 7 years by the Applicant to file the Bill for taxation must be condemned and abhorred as required under the provisions of the law. The deponed that the bill herein is caught by limitation and should be dealt with as necessary, struck out with costs to the Respondent.

4. The applicant filed a ground of opposition stating that:
- a) The application is misconceived
 - b) The application is an abuse of the court machinery
 - c) The application is bad in law

ISSUE ARISING FOR DETERMINATION

5. The issue arising for determination is

a) Whether the Advocate-Client Fee Note/Bill of Costs is time barred under the limitation of actions act

ANALYSIS AND DETERMINATION

Whether the Advocate-Client Fee Note/Bill of Costs is time barred under the limitation of actions act

6. In the case of [Abincha & Co Advocates v Trident Insurance Co Ltd \[2013\] KEHC 6821 \(KLR\)](#) it was stated that:

*25. An advocate's claim for costs would be based on the contract for professional services between him and his client. It would be a claim founded on contract. An action to recover such costs would be subject to the limitation period set out in section 4(1) (a) of the Limitation of Actions Act. In this connection see also **Halsbury's Laws of England, 4th Edition, Volume 28 at paragraph 879 (page 452)** which states -*

"879. Solicitor's 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 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 runs against a solicitor from the completion of the work and not from the delivery of the bill. If some only of items included in the bill are statute-barred, the solicitor may recover in respect of the balance.”

28. As already seen, any claim or action for an advocate’s costs is subject to the statute of limitation. As already seen also, time begins to run from the date

of completion of the work or lawful cessation of the retainer. Time does not begin to run from the date of delivery of the bill! Section 48(1) of the Advocates Act therefore cannot offer any defence against limitation.

30. *I therefore hold that any of the various bills of costs filed by the Advocate more than six (6) years after completion of the work which he was retained by the Client to do, or after the lawful termination of the retainer in respect of such work, is statute-barred by virtue of section 4(1) (a) of the Limitation of Actions Act. “*

7. Since an advocate’s claim for costs is based on the contract for professional services between him and his client, the claim is founded on contract and falls under the limitation of actions act. Section 4 (1)(a) of the Limitation of Actions Act which provides that:

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;

(b)...

(4) An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment

was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.

8. Judgement in the matter was rendered on 23rd March 2010 and that is when time started to run. The applicant filed the bill of costs on 18th April 2024, after a period of 6 years from the time he completed his work, had elapsed. Therefore, the claim was already al statute-barred by section 4(1) (a) of the Limitation of Actions Act. The preliminary objection is merited, and thus the bill of costs is struck out for being time-barred.

9. Each party to bear his own costs.

T.A ODERA
JUDGE
17.12.25

Delivered virtually via teams platform on this 17th day of December 2025 in the presence of:

N/A for parties.

Court Assistant - Matiko

T.A ODERA
JUDGE

17.12.25

Miss Nyaenya: I am for the respondent in the PO, I seek leave to appeal.

Order: Leave to appeal is granted.

**T.A. ODERA
JUDGE
17.12.2025**