



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL MISCELLANEOUS CASE NO. E173 OF 2025

NDUATI & COMPANY ADVOCATES.....

APPLICANT

-VERSUS-

OCCIDENTAL INSURANCE CO. LTD.....

RESPONDENT

RULING

1. The Applicant, a law firm, filed an Advocate/Client Bill of Costs dated 6th May, 2025 for taxation by the Taxing Officer of this court. The Respondent which was the Applicant's Client reacted by filing a Notice of Preliminary Objection dated 10th November, 2025 predicated upon the provisions of **Section 4 (1) (a)** of the **Limitation of Actions Act Cap 22** of the Laws of Kenya. The Respondent argues that the Bill of Costs was filed more than 6 years after completion of

work the Applicant was retained to do in **Nakuru CMCC No.253 of 2016 (Mary Njoki Kiarie vs Gilanis Supermarket Limited)** in which Judgment was rendered on 19th July 2017. It is contended that taxation of the Bill of Costs is statute barred by dint of the above stated enactment and the Respondent wants it struck out or dismissed.

2. Learned Counsel for the parties filed written submissions on the preliminary point. The Respondent's Advocate submits that the parties' relationship is that of Advocate and Client which is contractual. It is submitted that Pursuant to **Section 4 (1) (a)** of the **Limitation of Action Act** above cited, actions founded on contract may not be brought after the end of six (6) years from the date the cause of action accrued. According to the Respondent, the Bill of Costs is filed about 8 (eight) years after the cause of action, a period well outside the limitation period.

3. In support of the Respondent's submissions reference is made to judicial determinations in **Abiach & Company Advocates vs Trident Insurance Co. Ltd. (2013) eKLR**

and **Akide & Co. Advocates vs Kenindia Assurance Co. Ltd (2017) eKLR** in which a Bill of Costs was found to be incompetent in similar circumstances.

4. The court is therefore urged to find that it has no jurisdiction to entertain the Bill of Costs under reference.
5. The Applicant retorts that the preliminary point is defective since certain relevant facts are in dispute. According to the Applicant, the parties' relationship was governed by service level agreement that constitutes continuous work and that the agreement was in force until the year 2025. The Applicant therefore contends that the matter raised in the Respondent's objection can only be established after an examination of the relevant facts.
6. The issue for determination is whether taxation of the Bill of Costs in question is barred by limitation on account of **Section 4 (1) (a)** of the **Limitation of Actions Act** *supra*. It is not in dispute that the relationship between the parties is contractual and that the Bill of Costs was filed outside the 6 years limitation period set statute.

7. In **Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) E.A. 696** alluded to by Counsel, it was laid down that a preliminary objection raises a pure point of law such as limitation which, if successfully argued, may dispose of a matter in *limine*. It is not properly taken up if relevant facts are contested.
8. The Applicant contends that it entered into a retainer with the Respondent that was to end in 2025. This claim appears to be disputed as the Respondent maintains that the contract between the parties ended much earlier on 19th July 2017 when Judgement in **Nakuru CMCC No.253 of 2016** was rendered. The preliminary objection is not therefore based on a pure point of law.
9. The preliminary objection is dismissed with no order as to costs. As agreed by the parties, this Ruling applies to **Miscellaneous Civil Application No.154 of 2025** between the same parties.

J. M. NANG'EA, JUDGE.

Judgment delivered this 22nd Day of April, 2026 in the presence of:

The Applicant's Advocate, Mr. Njoroge

The Respondent's Advocate, Ms. Kibore

The Court Assistant, Mr. Ng'eno.

J. M. NANG'EA, JUDGE.

ORIGINAL