



**Kiplenge and Kurgat Advocates v Estate of William Kimenjo Mosonik (Miscellaneous Application E043 of 2023) [2025] KEHC 608 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 608 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MISCELLANEOUS APPLICATION E043 OF 2023  
HI ONG'UDI, J  
JANUARY 30, 2025**

**BETWEEN**

**KIPLENGE AND KURGAT ADVOCATES ..... APPLICANT**

**AND**

**THE ESTATE OF WILLIAM KIMENJO MOSONIK ..... RESPONDENT**

**RULING**

1. This ruling is in respect of the Preliminary objection dated 6<sup>th</sup> September, 2023 filed by the respondent against the applicant's suit on the grounds that;
  - i. That the bill of costs dated 9<sup>th</sup> September 2022 as drawn and filed is totally defective for want of compliance with the law.
  - ii. That the subject matter of the bill of costs, that is, the grant in relation to the estate of the deceased was confirmed on 30<sup>th</sup> August 2012.
  - iii. That the bill of costs offends the provisions of Section 4(1)(a) of the Limitations of Actions Act, Cap 22 and the respondent intends to rely on the case of Akide & Company Advocates v Kenindia Assurance Company Limited [2021] eKLR.
2. The preliminary objection was disposed of by way of written submissions.

**Respondent's submissions**

3. These were filed by Kae & Partners Advocates and are dated 20<sup>th</sup> February, 2024, where counsel identified three issues for determination.
4. The first issue is whether the preliminary objection meets the required threshold, as it is challenging the competency of the bill of costs dated 9<sup>th</sup> September 2022 which was time barred, having been brought approximately ten (10) years after confirmation of grant on 30<sup>th</sup> August, 2012. He submitted that the



said preliminary objection met the threshold as it is based on a point of law. In support of this position he placed reliance on section 4 of the Limitation of Actions Act and the decision in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distribution Ltd* (supra)

5. The second issue is whether the advocate's instructions are based on a contract. Counsel submitted in the affirmative and cited the decision in *Abincha & Co. Advocates v Trident Insurance Company Limited* [2013] eKLR. The third issue is whether the applicant's application as filed is time barred. He placed reliance on the aforementioned case where the court pronounced itself thus:

“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 ... 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”

6. In conclusion, he urged the court to consider the mischief that the Limitation of Actions Act sought to cure. The court's attention was drawn to the case of *Monarch Insurance Co. Ltd Vs Parbat Siyani Construction Co. Ltd* [2016] eKLR, where the court adopted with approval the decision of Lord Denning in the case of *Letang vs Cooper* [1994] 2 All ER

929 (CA) (at page 936) which stated;

“The Act is a Limitation Act, it relates only to procedure. It does not divest any person of rights recognized by law; it limits the period within which a person can obtain a remedy from the courts for infringement of them. The mischief against which all Limitation Acts are directed is delay in commencing legal proceedings or delay may lead to injustice, particularly where the ascertainment of the relevant facts depend on oral testimony. This mischief, the only mischief against which the section is directed is the same in all actions in which damages are claimed in respect of personal injuries.”

7. He further urged the court to dismiss the applicant's bill of costs which is statute barred and costs of the application be awarded to the respondent.

### **Applicant's submissions**

8. These were filed by Kiplenge & Kurgat Advocates and are dated 26<sup>th</sup> April, 2024, where counsel identified three issues for determination.

9. The first issue is whether or not the advocate-client bill of costs herein has been filed in contravention of section 4(1) (a) of the Limitation of Actions Act. Counsel submitted in the negative and cited the said section of law. He added that the six (6) years period as contemplated under the Limitation of Actions Act had not lapsed in light of the amended grant dated 23<sup>rd</sup> March 2017.

10. He also placed reliance on the decision in *Abincha & Co Advocates vs Trident Insurance Co Ltd* (2014) Misc Application No 827 OF 2011 eKLR where the court referred to the Halsbury's Laws of England, 4<sup>th</sup> Edition, Volume 28 at paragraph 879 (page 482) where the authors indicate as follows;

“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.”

11. The second issue is whether the notice of preliminary objection raised is sustainable. He submitted in the negative and cited the decision in *Mukhisa Biscuit Manufacturers Ltd v West End Distributors Ltd* [1969] E.A 696. He added that all limbs of the preliminary objection require further interrogation and enquiry and therefore not feasible to be sustained as a preliminary objection.
12. The third issue is on costs, and he placed reliance on the decision in *Republic -vs Rosemary Wairimu Munene, Ex-Parte Applicant v Thururu Dairy Farmers Co-operative Society Ltd*, where the court held as follows:

“The issue of costs is the discretion of the court as provided under the above section. the basic rule on attribution of costs is that costs follow the event...It is well recognized that the principle costs follow the event is not to be used to penalize the losing party; rather it is for compensating the successful, party for the trouble taken in prosecuting or defending the case.”

13. Lastly, he urged the court to award costs to the applicant.

#### **Analysis and determination**

14. I have carefully considered the preliminary objection raised herein and the submissions by the parties. I find the issue arising for determination to be whether the advocate-client bill of costs dated 9<sup>th</sup> September, 2023 is incompetent for being time barred.



15. An objection on the ground that a matter is caught up by the law of limitation of actions is a pure point of law as was held by Law JA in the case of Mukisa Biscuit Manufacturing Co. Ltd -Vs- West End Distributors Ltd (1969) EA 696:

“so far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of the 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 a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration”

16. A relationship between an advocate and his or her client is a contractual relationship for professional services. Therefore, such a relationship is subject to the Limitation of Actions Act, specifically Section 4 (1) of the Limitation of Actions Act which provides as follows;

Section 4(1) of the Limitation of Actions Act, Cap 22

Laws of Kenya states as follows:-

“Actions of contract and tort and certain other actions

The following of six years from the date on which the cause of action accrued—

- a) actions founded on contract;
- b) actions to enforce an award;
- c) actions to recover a sum recoverable by virtue of a written law, other than a penalty or forfeiture or sum by way of penalty or forfeiture;
- d) actions, including actions claiming equitable relief, for which no other period of limitation is provided by this Act or by any other written law.”

17. Further, the Court of Appeal in the case of Abincha & Co Advocates v Trident Insurance Co Ltd (supra) also relied on by the parties herein, considered the question of when time starts to run in an action for recovery of legal fees and quoted with approval Halsbury’s Laws of England 4<sup>th</sup> Edition Volume 28 page 452 at paragraph 879. (see paragraph 5 herein above).

18. In the present case, the respondent does not dispute having instructed the applicant to defend its interests. Its case is that the applicant’s bill of costs is time barred having been brought almost ten (10) years after confirmation of grant on 30<sup>th</sup> August 2012. On the other hand the applicant contends that the six (6) years period as contemplated under the Limitation of Actions Act had not lapsed in light of the amended grant dated 23<sup>rd</sup> March 2017.

19. This court confirms that the bill of costs presented for taxation is dated 9<sup>th</sup> September 2022. In the current case, there is no doubt that the work ended over ten (10) years ago as seen in the certificate of confirmation of grant attached to the respondent’s submissions. No evidence was adduced by the applicant to the contrary and neither was the alleged amended grant dated 23<sup>rd</sup> March 2017 availed. Further, the applicant is not alleging that further instructions were given by the respondent between 30<sup>th</sup> August, 2012 and 23<sup>rd</sup> March, 2017 when there was an alleged amendment to the confirmed grant. In the absence of such information this court cannot proceed on the assumption that the bill of costs was filed within the required timelines.

20. In light of the provisions of section 4(1) (a) of the Limitation of Actions Act, it is my finding that the applicant’s bill of costs is time barred and it would not be prudent to call upon the respondent to settle



legal fees for work that was done over ten (10) years ago. Moreover, it is not clear why the applicant did not submit its final fee note upon completion of the case.

21. For the foregoing reasons, I find that the respondent's preliminary objection of 6<sup>th</sup> September 2023 is merited and the same is allowed as prayed.
22. No orders as to costs.
23. Orders accordingly

**DELIVERED VIRTUALLY, DATED AND SIGNED THIS 30<sup>TH</sup> DAY OF JANUARY, 2025 IN OPEN COURT AT NAKURU**

**H. I. ONG'UDI**

**JUDGE**

