



**Ileri t/a Ileri & Company Advocates v Mbugua (Miscellaneous Civil Application E981, E984 & E985 of 2023 (Consolidated)) [2025] KEHC 11763 (KLR) (Civ) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11763 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**CIVIL**  
**MISCELLANEOUS CIVIL APPLICATION E981, E984 & E985 OF 2023 (CONSOLIDATED)**  
**LP KASSAN, J**  
**JULY 31, 2025**

**BETWEEN**  
**ELIJAH NJAGI IRERI T/A IRERI & COMPANY ADVOCATES ..... APPLICANT**  
**AND**  
**MARY WARIARA MBUGUA ..... RESPONDENT**  
**AS CONSOLIDATED WITH**  
**MISCELLANEOUS CIVIL APPLICATION E984 OF 2023**

**BETWEEN**  
**ELIJAH NJAGI IRERI T/A IRERI & COMPANY ADVOCATES ..... APPLICANT**  
**AND**  
**DR MARY WARIARA MBUGUA ..... RESPONDENT**  
**AS CONSOLIDATED WITH**  
**MISCELLANEOUS CIVIL APPLICATION E985 OF 2023**

**BETWEEN**  
**ELIJAH NJAGI IRERI T/A IRERI & COMPANY ADVOCATES ..... APPLICANT**  
**AND**  
**DR MARY WARIARA MBUGUA ..... RESPONDENT**



## RULING

1. Elijah Njagi Ileri t/a Ileri & Co. Advocates (hereafter the Advocate/Applicant) filed respective Bills of Costs dated 18.10.2023 in Nairobi HC Misc. Civil Application E981 of 2023, Nairobi HC Misc. Civil Application E984 of 2023 and Nairobi HC Misc. Civil Application E985 of 2023 (hereafter the Bills of Costs) as against the Dr. Mary Wariara Mbugua (hereafter the Client/Respondent).
2. In response and prior to taxation of the respective Bills of Costs, the Client/Respondent filed in the respective matters an application dated 09.08.2024 seeking inter alia: -
  - a. That this honorable Court be pleased to strike out the Advocate/Applicant's Bills of costs dated 18.10.2023
  - b. That the costs of the application together with the Advocate/Applicant Bill of Costs dated 18.10.2023 be awarded to the Client/Respondent.
3. The respective Client/Respondent's motions were brought pursuant to Section 4(1)(a) of the Limitation of Actions Act and Paragraph 12 of the Advocates Remuneration Order (ARO) and supported by an affidavit deposed by the Client/Respondent on even date. The gist of her deposition in the respective affidavits was that she entered into a contractual relationship with the Advocate/Applicant for provision of legal services in the year 2012 to 2015. On 17.03.2025, she terminated the services of the Advocate/Applicant and appointed another firm of advocates. She goes on to state that the respective Bills of Costs relate to legal work done by the Advocate/Applicant prior to March 2015 which services were terminated whereas the respective Bills of Costs dated 18.10.2023 ought to have been filed within six (6) years of 17.03.2015. In summations she states that the respective Bills of Costs are statute-barred as such the Court lacks jurisdiction to tax the same thus it is in the interest of justice that the same are struck out with costs.
4. The Advocate/Applicant opposes the respective motions by way of affidavits deposed by Elijah Njagi Ileri. He confirms that as at 2015 he had acted for the Client/Respondent through retainer on several assignments he was instructed on wherein he was paid Kshs. 2,600,000/- as deposit of the retainer. That among the assignments was to handle transfer of shares at Konza Ranching & Farming Co-operative Society, to wit, the retainer fee was to cater for his legal services. He states that in 2022, the Client/Respondent lodged a complaint at the Advocates Disciplinary Tribunal alleging that the amount of Kshs. 2,600,000/- was to be utilized towards purchase of a property, which he had not been instructed on. That given the forestated complaint, the retainer could not be considered revoked and it was not until 2022 when the complaint was filed that the cause of action arose therefore within the 6-year limitation period. He maintains that the cause of action can only crystalize when there is a dispute between the parties or when the dispute arose as such the bills of costs are not statute barred. In conclusion he urges the Court to dismiss the motions given that the Client/Respondent does not dispute instructing him on various matters.
5. On the backdrop of an order of consolidation on 27.11.2014, directions were later taken on disposal of Client/Respondent motions in the respective bills by way of written submissions. The parties duly complied whereas this Court has duly considered the rival affidavit material and submissions thereto.
6. In presenting the respective motions side from Paragraph 12 of the ARO the Applicant has relied on Section 4(1)(a) of the Limitation of Actions Act. It is useful to note by the respective motions, the Client/Respondent objection concerns limitation as to time with respect to the Advocate/Applicant's Bills of Costs, hence jurisdiction, and thus qualifies as a preliminary question in limine. It is trite



that the question of limitation of time goes to the root of the Court’s jurisdiction to entertain the proceedings before it, as no Court has jurisdiction to hear a matter that is time barred. See the celebrated case of *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] KLR 1. The Court of Appeal in *Thuranira Karauri v Agnes Nchebe* [1997] eKLR observed that:

“We do not understand how the Judge could proceed with the trial without finally determining such an important point of jurisdiction and it is pointed out that as a general rule, a point or issue of limitation of time goes to the root of jurisdiction which this Court should determine at the first instance. Subsequently, that where a suit is time barred, the same is incompetent and consequently a court has no jurisdiction to entertain such suit”.

7. Agitating the question of jurisdiction, the Client/Respondent has anchored the same on Section 4(1) (a) of the *Limitation of Actions Act*, which provides that-;

“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; .....

8. In determining whether the Advocate/Applicant’s Bills of Costs were filed out of time, the Court must contemporaneously determine when the cause of action arose. From the record before this Court, it appears that in Nairobi HC Misc. Civil Application E981 of 2023, the Advocate/Applicant’s claim for costs arose from instructions to peruse transfer of shares at Konza Ranching & Farming Co-operative Society valued at Kshs. 6,000,000/-; in *Nairobi HC Misc. Civil Application E984 of 2023*, the Advocate/Applicant’s claim for costs arose from instructions to demand and institute suit for recovery of outstanding sum of Kshs. 4,092,365/- owed to Equinox Holdings Ltd where the Client/Respondent is a director; and *Nairobi HC Misc. Civil Application E985 of 2023*, the Advocate/Applicant’s claim for costs arose from instructions to register the Company – Pronet Training Solutions Ltd.

9. The forestated legal services were perceptibly premised on a contract arising out of an Advocate-Client Services between the Applicant and Respondent wherein the Applicant asserts that he was retained and paid a deposit of Kshs. 2,600,000/-. The Respondent did not offer any response on the issue. That said, a detailed review of the parties’ rival affidavit material and respective Bills of Costs, the Advocate appears to have been instructed between 2012 to 2014. From the respective Bills of Costs there is no indication when the advocate completed work however what the Client contends is that as at 17/03/2015 she had withdrawn instructions from the Advocate and duly instructed the firm of Kairu and McCourt Advocates on all her legal matters.

10. I find it useful to quote in part the said letter for the benefit of the parties and the Court later in this ruling. The letter read in part as follows-;

Re: Appointment of Kairu and McCourt Advocates as my legal counsel

This letter is to advise you that with immediate effect, I have appointed Kairu and McCourt Advocates as my legal counsel for the various issues that I am currently dealing with. For that reason I am hereby requesting that you handover all the files in your possession pertaining to all the legal matters that you have been assisting me with during the past few years.

.....

.....I therefore plead with you to complete the handover within the next few days. Kindly make all your communication to Kairu and McCourt Advocates...



.....

I want to take this opportunity to sincerely thank you very much for the very able manner in which you have acted as my legal representative in the past three years. ....

Kindly let me know my outstanding bill is as soon as possible so that I make every effort to settle it..." (sic)

11. As to when time being to run, the Author's of Halsbury's Laws of England, 4<sup>th</sup> Edition, Volume 28 at Paragraph 879, observed as follows-;

"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 of items included in the bill are statute-barred, the solicitor may recover in respect of the balance."

12. It would be deduced from the above as at 17.03.2015, the advocate-client relationship had lawfully and been unilaterally terminated by the Client, to wit, the Advocate was duly asked to raise his outstanding fees on the matters he was handling. It appears he did, thus prompting a response from the Client in 07.04.2015 (Pg. 69 Annexure EN-2). As at the latter date, the advocate was alive to the termination of the retainer, this notwithstanding the later ensuing dispute before the Advocates Disciplinary Tribunal concerning the amount of Kshs. 2,600,000/- that the Advocates asserts was his retainer. I concur with Waweru, J. in *Abincha & Co. Advocates v Trident Insurance Co. Ltd* [2013] eKLR wherein he observed inter alia that:

"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...I therefore hold that any of the various bills of costs filed by the Advocate more than six 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*."

"Even if the statute of limitation did not apply to the Advocate's bills of costs (and clearly it does!) the Advocate having presented what appeared to be a final fee note



upon completion of each brief, and the same having been paid by the Client who then proceeded to archive or destroy its related files, the Advocate is estopped in law and in equity from turning around, between 8 and 11 years later as the case may be, to raise “final” bills of costs”

13. Palpably, the enforcement of the Advocate-Client contract by way of an action was subject to the limitation period as set out in Section 4(1)(a) of the [Limitation of Actions Act](#). Thus, the Advocate’s claim on costs being one premised on a Contract for professional services rendered, as counsel, it ought to have been filed by way of a Bill of Costs or otherwise, within a period of six (6) years upon the termination of the retainer, namely 17.03.2015. The Advocate/Applicant only filed the Bill of Costs in 2023, some two (2) years after the lapse of the limitation period. The Bills ought to have been filed on or before 17.03.2021.
14. In the result, the Court finds that the Client/Respondent’s motions dated 09.08.2024 have merit. The Advocate/Applicant respective Bill of Costs in *Nairobi HC Misc. Civil Application E981 of 2023*, *Nairobi HC Misc. Civil Application E984 of 2023* and *Nairobi HC Misc. Civil Application E985 of 2023* are time barred and incompetent by dint of the provisions of section 4(1) (a) of the [Limitation of Actions Act](#). A taxing master would have no jurisdiction to entertain them. Consequently, the respective Bills of Costs dated 18.10.2023 are struck out with cost of each matter capped at Kshs. 5,000/-

Orders Accordingly!

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 31<sup>ST</sup> DAY OF JULY 2025**

**LINUS P. KASSAN**

**JUDGE**

In the presence of:-

Kingati for Applicant

No appearance Respondent

Carol – Court Assistant

