

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

MISC. CIVIL APPLICATION NO. E116 OF 2021

MARTHA WAWERU & CO ADVOCATES.....
APPLICANT

VERSES

JORAM MARANGU
MWIRICHIA.....RESPONDENT

RULING

1. The Applicant filed a party and party bill of costs dated 2nd July, 2021. The said bill of costs arises from Nakuru High court Misc. Application in No. 527 of 2019 which is not the file before me.
2. In his response to the bill of costs the respondent filed grounds of opposition dated 16th September, 2021. The main ground being that the court in its ruling delivered on 12th March, 2020 did not pronounce itself on the issue of costs.
3. The applicant filed a response to the grounds of opposition. Her response is dated 27th September, 2021.
4. Both parties through their counsel filed written submissions on the issue of the Bill of Costs. Also filed is a copy of the Ruling by Prof. Ngugi J (as he then was) delivered on 12th March, 2020.
5. The following are the orders that were issued by the court:

- a) *The Applicant is granted leave to file his Appeal out of time.*
 - b) *The Applicant shall file and serve a Memorandum of Appeal within seven days of the date hereof.*
 - c) *The prayer for stay of execution of the judgment and decree issued in the Lower Court is declined.*
 - d) *The Applicant shall satisfy the entire decretal amount within thirty days of today failure to which execution to issue.*
6. It is therefore not disputed that the court was silent on the issue of costs. In the application before the Court in Misc. Application No. 527 of 2019 at prayer No. 7 it is stated “That costs of this Application be provided”. The issue of costs was therefore clearly one of the prayers sought in the application.
7. Section 27 of the Civil Procedure Act provides as follows:
- Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that*

the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

8. In the case of: **Supermarine Handling Services Ltd V Kenya Revenue Authority [2020] eKLR** the Court of Appeal stated thus;

“The general rule is that costs follow the event and the successful party should not be deprived of costs unless for good reason”.

9. In this case the application dated 06/11/2019 was half successful ie. The applicant was granted leave to file the appeal out of time and he was given time lines for filing the Memorandum of Appeal. However, the prayer for stay of execution was declined. This interpreted means each party was half successful. That could be the reason why no order for costs was made by the trial Judge. The Applicant herein would wish to get costs on what he won. Since each lost on one part and won on the other part I direct that each party bears his/her costs in the application dated 12th March, 2020.

10. This bill of costs is therefore dismissed and each party will bear his own costs

11. Orders accordingly.

Delivered virtually, dated and signed this 4th December, 2025 in open court at Nakuru.

H. I. ONG'UDI
JUDGE