

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

MISC. CIVIL APPLICATION NO. E115 OF 2021

MARTHA WAWERU & CO ADVOCATES.....
APPLICANT

VERSES

JORAM MARANGU
MWIRICHIA.....RESPONDENT

RULING

1. The applicant filed the bill of costs arising from Nakuru Civil Appeal No. 55 of 2020. It is dated 2nd July, 2021.
2. The respondent filed a preliminary objection (P. O) on the ground that the application was premature as the appeal was pending.
3. The applicant filed a replying affidavit in response dated 27th September, 2021. She opposed the Preliminary Objection saying the court in the ruling dated 1st July 2021 awarded costs to the respondent in the application dated 24th June, 2020, arising out of Civil Appeal No. 55 of 2020.
4. The P. O. was canvassed by written submissions.

Respondent's submissions

5. In support of the Preliminary Objection, Kinyanjui Njuguna & Co. advocates filed the submissions dated 22nd October, 2025. Counsel raised issue with this bill of costs having been

filed in separate file instead of the Appeal file. To buttress this point, he cited the following cases:

- (i) **Republic V Independent Electoral & Boundaries Commission ex parte Wavinya Ndeti [2017] eKLR** where the court held:

"A bill of costs ought to be filed in the same cause where the order for costs was made. There is no legal basis for initiating a fresh or miscellaneous cause solely for the purpose of taxation..."

- (ii) **Joseph Kamau Gichuki v Barclays Bank of Kenya Ltd 120061 eKLR**, where the Court observed:

"Filing a bill of costs in a separate file is an irregularity that goes to the root of the taxation proceedings and renders the entire process void"

He urged the court to strike out the bill of costs with costs.

Applicants submissions

6. These were filed by Martha Waweru & Co. advocates and are dated 13th October, 2025. Counsel has argued that in Civil Appeal No. 55 of 2020 in the ruling delivered on 1st July, 2021, Joel Ngugi J (as he then was) expressly awarded costs of the application dated 24th June, 2020 to the applicant.
7. Counsel while referring to section 27(1) Civil Procedure Act submitted that once a party is successful in their litigation even if the court is silent on the issue of costs the right to taxation crystalizes immediately. Secondly paragraphs 13A

& 51 of the Advocates (Remuneration) Order empowers an advocate to file and prosecute a Bill of Costs without having to wait for determination of the main suit.

8. Referring to Order 51 Rule 3 Civil Procedure Rules she submitted that the court may grant costs of an application at its discretion, independent of the main suit. On this she cited the case of:

(i) Devani & Others V Joseph Ngindari & 3 Others [1999] eKLR

(ii) Macharia NIC Bank Limited (Civil Appeal 521 of 2018) [2025] KEHC 33 (KLR) among many others.

Analysis and determination

9. I have carefully considered the Preliminary Objection, response, plus the submissions by both parties. The issue is whether the applicant is entitled to costs in respect of the application dated 24th June, 2020. It was filed in the course of the Appeal but before the same was heard.

10. To crown it all the ruling of 1st July, 2020 clearly awarded costs to the respondent in the said application. This is what the court said in the ruling.

“The Applicant shall also pay the costs of this Application”

In that case the applicant was **Joran Marangu Mwirichia** who is the present respondent.

11. I have seen the Judgment in Civil Appeal No. 55 of 2022 where the court said *“Each party to bear its own costs of the Appeal”*.

This does not stop the applicant from following up on the costs awarded vide the ruling of 1st July, 2021 since that order had never been reviewed. Let the parties appear before the Deputy for each party to argue his/her case on the taxing of the costs awarded by the court to the respondent in the said application.

12. The upshot is that the Preliminary Objection lacks merit and is dismissed with costs.

13. The Taxing Officer must ensure he/she has HCA No. 55 of 2020 during the taxation.

14. Orders accordingly.

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

**H. I. ONG’UDI
JUDGE**