



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MIGORI

[Coram: A. C. Mrima, J.]

MISC. CIVIL APPLICATION NO. 17 OF 2019

SOUTH NYANZA SUGAR CO. LTD.....APPLICANT

-VERSUS-

NASHON KERATI MURIRI t/a MURIRI AUCTIONEERS.....RESPONDENT

(Being a reference from the ruling and order of the taxing officer Hon. M. M. Wachira, Senior Resident Magistrate in Migori High Court Civil Appeal No. 80 of 2016 delivered on 16/08/2018)

RULING

1. This ruling is on the reference from the taxing officer's taxation of the Respondent's Supplementary Bill of Costs dated on 10/07/2018. The ruling was delivered on 16/08/2018 in *Migori High Court Civil Appeal No. 80 of 2016*.
2. There is only one issue for determination. It is whether the Respondent who is a Licensed Auctioneer was entitled to Court attendance costs under **Schedule 6** of the **Advocates Remuneration (Amendment) Order**. Items 7, 12 and 14 of the Respondent's Bill of Costs which allowed such costs are disputed as taxed.
3. The taxing officer found in the affirmative. The Applicant contended otherwise for the reason that the Respondent is not an Advocate of the High Court of Kenya.
4. The reference was disposed by way of written submissions. Both parties duly complied. At the hearing of the reference the Respondent appeared in person whereas the Applicant was represented by Counsel.
5. This Court is now called to determine whether the Learned Taxing Officer erred in allowing items 7, 12 and 14 of the Respondent's Bill of Costs.
6. I have intently looked at the record before me, the ruling in issue and the parties' submissions. I find the reference fairly straight-forward.
7. The Respondent is a licensed auctioneer. He is not an Advocate of the High Court of Kenya. He personally participated in the proceedings as the Respondent.
8. The remuneration for auctioneers is provided for and regulated under the **Auctioneers Act No. 5 of 1996** and *the rules and regulations* made thereunder. It cannot therefore be true that an auctioneer is entitled to any remuneration under the **Advocates Remuneration (Amendment) Order** pursuant to the **Advocates Act, Cap. 16** of the Laws of Kenya. The reason is simple. An auctioneer is not an Advocate and cannot reap where he/she never sows. The only exception thereto is where the law expressly provides otherwise. In this case no such law was cited by the taxing officer and/or the Respondent.
9. The upshot is therefore that any expenses incurred by an auctioneer while discharging his official duties can only be ascertained under the appropriate legal regime. Such costs must be subjected under the appropriate law to authenticate liability. In any event, that law cannot be the **Advocates Remuneration (Amendment) Order**.
10. The Honourable taxing officer therefore, and respectfully, erred in taxing items 7, 12 and 14 of the Bill of Costs under **Schedule 6** of the **Advocates Remuneration (Amendment) Order**. It was a misdirection.

11. The reference is therefore merited.

12. As agreed and directed, the orders herein shall apply in *Migori High Court Misc. Civil Application No. 18 of 2019*.

13. Having said so, the following final orders do hereby issue: -

a. The Chamber Summons dated 04/03/2019 is hereby allowed. For clarity, items 7, 12 and 14 of the Respondent's Supplementary Bill of Costs dated 10/07/2018 are hereby disallowed and taxed off. The ruling and the resultant certificate of costs are accordingly varied.

b. The Respondent shall bear the costs of these proceedings.

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 27th day of February, 2020.

A. C. MRIMA

JUDGE

Ruling delivered in open Court and in the presence of: -

Nashon Kerati Muriri the Appellant in person.

Mr. Marvin Odero Counsel instructed by Messrs. Okong'o, Wandago & Company Advocates for the Respondent.

Evelyne Nyauke - Court Assistant